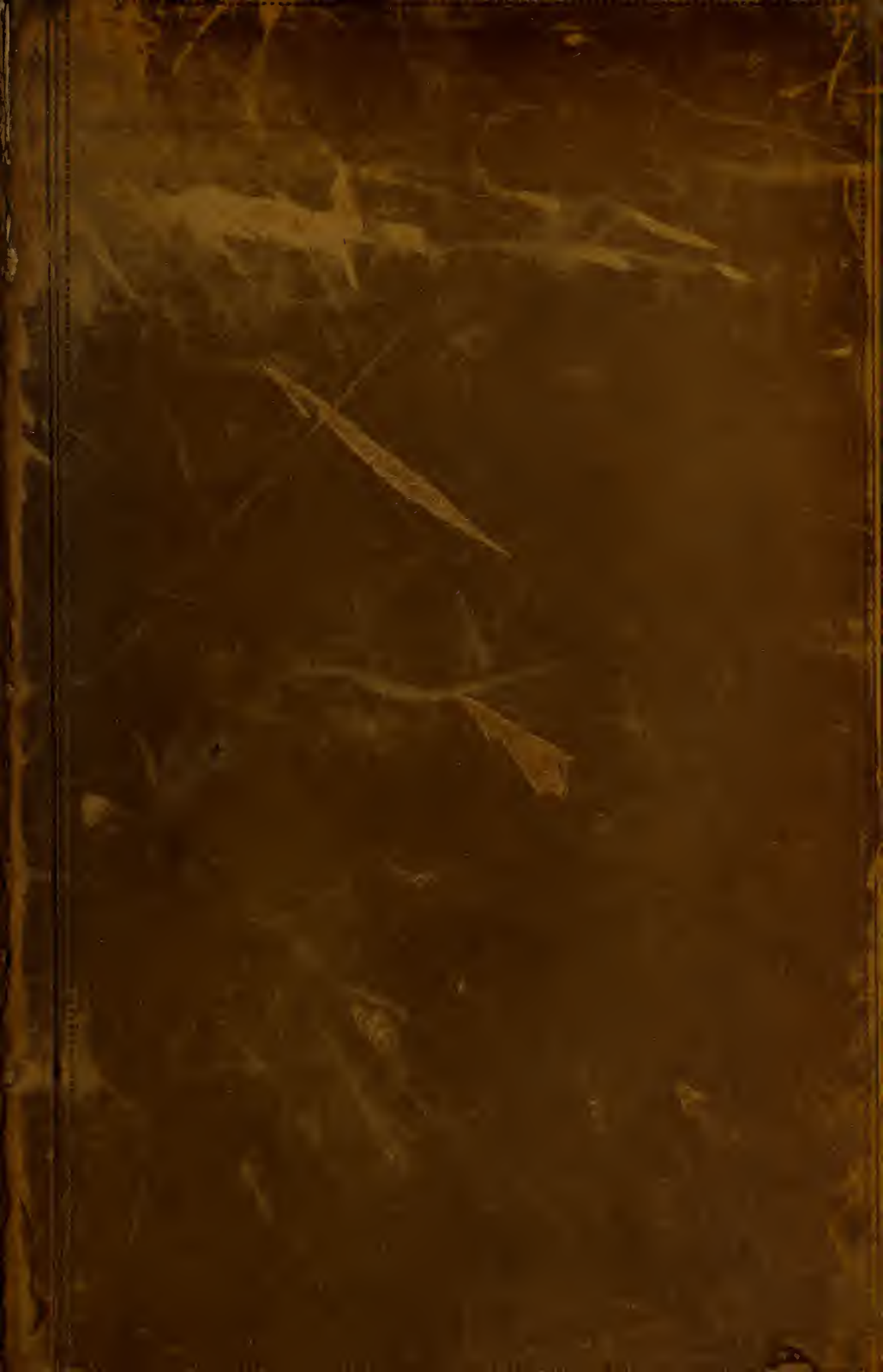


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UNITED STATES OF AMERICA.

# The History

OF

# Church Laws

## In England,

FROM A.D. 602, TO A.D. 1850.

BY

EDWARD MUSCUTT,

AUTHOR OF "THE HISTORY AND POWER OF ECCLESIASTICAL COURTS."

LONDON:

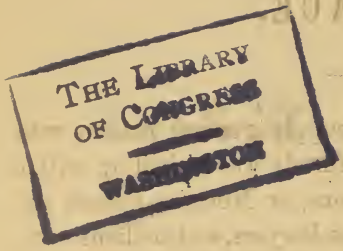
CHARLES GILPIN, BISHOPSGATE STREET WITHOUT.

EDINBURGH: ADAM AND CHARLES BLACK.

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# PREFACE.

This volume is intended to supply general readers with such authentic information as formerly was locked up within old Saxon chronicles, Latin canons, or Norman-French statutes; and with which antiquarians, lawyers, and civilians were, at one time, the only persons acquainted. But, happily, the labours of distinguished literary men have, at various periods, brought to greater light the facts connected with our early Church History. Still, the form in which this knowledge has been conveyed, excludes, to a very great extent, the masses of the people from making themselves acquainted with the subject. They have been bound to obey laws, the merits of which they were unable to test.

The author of the following work feels happy to acknowledge his obligations to the distinguished men who have made the intricate subject of ecclesiastical legislation their study, and to whose labours, in this department of literature, our country has been laid under a lasting debt of gratitude. Among these are Spelman, Lynwood, Somner, Gibson, Burn, and other civilians or divines. The most valuable work, however, is Johnson's "Collection of Ecclesiastical Laws." This includes the researches of nearly every previous writer, and is rendered increasingly useful by having consolidated information, which before had been hidden under the now obsolete Saxon language. Yet it is to such records we must refer, ere we can obtain satisfactory evidence of the first foundation of the present English church.

To this work of Johnson (who was vicar of Cranbrook), published in 1720, repeated reference will be made. In the absence of any other authority being quoted, the reader is requested to consider this laborious antiquarian as supplying those facts which are drawn from the canons.

But as canonical laws have not been the only branch of legislation called into action upon church questions, nor *alone* supply the *whole* history of many given points, there have been added the statutes. These, in many instances, furnish the most remarkable illustrations of the disposition both of the civil and spiritual power. By blending the two (which are presented in a continuous form), the reader will, at a glance, obtain a clear and full view of the mighty influences that constantly have been exerted, as well for mischief as for benefit.

In respect of the statutes quoted, it may be sufficient to state, that Keble's compilation, and that published by the Commissioners of Public Records, have been exclusively used.

It only remains for the author to express his sincere and grateful acknowledgments to the authorities of several public institutions, and to private friends, who have kindly afforded him every facility in the prosecution of his labours. Among the former are included the Trustees of the British Museum, and the Council of the Law Incorporated Society; and among the latter he begs particularly to express his thanks to W. T. Alchin, Esq., the learned librarian of the corporation of the city of London, for many opportunities afforded of free access to, and assistance in, consulting works in the Guildhall Library.

KINGSLAND,
27th February, 1851.

# HISTORY

OF

# CHURCH LAWS.

Laws delineate national character. They serve not only to portray the features, but in many instances help to perpetuate the dispositions of those from whom they derived their birth. This embodiment of the moral and intellectual condition of any people is most expressively marked in laws which relate to religion; other codes are a miniature profile—these, a full-length portrait. In the one we have an outline form of government; in the other, its hidden motives and living power. Ecclesiastical jurisprudence must, therefore, always sustain a unique and emphatic distinction. This fact is, in itself, sufficient to induce a desire to become acquainted with the system, even though it were not associated with another fact of singular practical moment. It is this:—the greater portion of mankind take their prevailing notions of religion from existing

Introduction.

Introduction. laws. These, rather than moral evidence, become the media through which they obtain their knowledge, estimate their obligations, and govern their decisions. No matter how absurd, presumptuous, or savage soever these laws may be, there are always some who will justify their enactment, and aid in their execution.

In reference to this compilation of church laws, it may, perhaps, be desirable at once to state that all legal technicalities are avoided. While the *facts* it records are drawn from sources which neither lawyers nor statesmen will attempt to upturn, or impugn; the *principles* it illustrates are those only which have been enunciated in the several enactments of which it is the register. The work is designed to exhibit, from national authentic records, the phases through which Christianity has passed in this country; and to supply the general reader with indisputable data, from which he may deduce such conclusions as shall appear to his own mind to harmonise with reason and revelation.

It is also to be observed, that all these facts and principles are given in the words of the laws themselves. The observations made, are intended to act as connecting links to the several subjects, rather than as the expression of opinion upon church polity.

# CHAPTER I.

## SKETCH OF THE PROGRESS OF CHRISTIANITY IN BRITAIN UNTIL THE ARRIVAL OF AUGUSTINE, A.D. 597.

The first planters of Christianity unknown.
The existence of British Churches prior to the arrival of Augustine.
The state of these churches under the Saxons.
Arrival of Augustine.
Resistance of the British bishops to his mission.
Claim of Augustine to work miracles.
Eventual submission of British Churches to the Bishop of Rome.

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### THE FIRST PLANTERS OF CHRISTIANITY IN BRITAIN, AND STATE OF THE EARLY CHURCHES.



By whom Christianity was first proclaimed in these isles, is matter of no great importance. It is doubtful whether this honour belongs to St. Paul. The early ambassadors of peace were content that their names should merge into their labours. It is, however, certain that during the apostolic age Britain witnessed their zeal, discouragements, and success.

The history of the early rise and progress of the Christian religion in Britain is left in comparative obscurity. Historians were at that time more rare than warriors. Literature then suffered an eclipse,

CHAP. I. and records were supplanted by traditions. Sufficient evidence has, however, attested that in Britain Christianity reckoned not a few triumphs. That it had become extensively known and appreciated seems incontrovertible, from what Bede states as a fact, viz., that Lucius, the British monarch, in A.D. 156, requested the bishop of Rome to send him over additional missionaries.

That Christian churches greatly increased is evident from the recorded testimony of historians, who state, that when, in A.D. 301, the violent persecution, under the Roman emperors, Dioclesian and his colleague Maximilian, broke out, Britain supplied a large quota of martyrs. Among these was Alban, who had at one time been a pagan idolater. He, however, gave shelter in his house to a Christian minister, who, fleeing from the persecution that then raged in Wales, sought an asylum in the eastern part of this island. Through the instructions and example of this devoted man, Alban himself became a Christian, and sealed his faith with his blood at Verulam, now called, in honour to his memory, St. Alban's. Chester, also, then had numerous Christian disciples. In Exeter, and many other places, numbers of both sexes suffered Christian martyrdom.

Though this persecution lasted ten years, and was designed wholly to extirpate Christianity from the Roman empire, there were yet, in A.D. 314, such a number of Christian churches left, as to allow five British bishops to appear at the council held that

year at Arles, in Gaul. So again, in A.D. 347, representatives of British churches were present at the council held this year at Sardica. They again met with other ecclesiastics from various parts, at the council convened at Arminium, in Italy, A.D. 359, where, says Collier, (I. 85,) "four hundred western "bishops met, all of whom were provided with conve- "niences in diet and lodging at the emperor's charge. "But the bishops of Gaul and Britain did not think it "proper to be thus supported by the Exchequer, and "chose rather to live upon their own pockets."

## STATE OF THE CHURCHES UNDER THE SAXONS.

The next two centuries witnessed the inroads of the Saxons, who, in a fatal moment, had been invited into Britain by Vortigern, in A.D. 449. Instead of proving auxiliaries, they turned enemies. Fierce wars raged between them and the Britons for 130 years. During these commotions, the state of the British churches became deplorable in the extreme. They were nearly overwhelmed and extinguished by the Anglo-Saxons. These new settlers adhered to the worship of pagan gods, and put an immense number of Christians to cruel deaths.

At length, in A.D. 587, they seized the sovereignty of the island, demolished Christian churches, and set up their own heathenism. Wales, Cornwall, and Cumberland were the only places where Christianity did not lose ground. Had the refugees in those parts

CHAP. I. been left to struggle alone and single-handed against idolatry and persecution, they would eventually have recovered the power of Christian truth and liberty. But Rome saw and professed to pity.

Ten years after the Saxon sovereignty had been planted in Britain, Rome sent Augustine with forty Benedictine monks, professedly to convert Saxon pagans. This conversion had been long a favourite idea with Gregory before he became Pope. Twenty-five years before the attempt was actually made, he had himself, it is said, contemplated coming hither upon this errand. The inducement, according to some historians, arose from his observing, in Rome, a number of young English slaves for sale. The oft-repeated incident respecting the "Angli—sed Angilli," bears, however, so much the appearance of an after-adjustment of phrases, as to induce some historians to attach little or no credence to the story. Gregory would probably never have planned, nor Augustine travelled, had conversion been the *only* object at which they aimed. Under his cowl the monk secreted a mitre. Subsequent events proved the fact.

### ARRIVAL OF AUGUSTINE.

A.D. 597. Augustine landed in the Isle of Thanet, A.D. 597. With solemn pomp and banners flying, he and the other monks directed their way to Ethelbert, then king of Kent. The wife of this monarch was herself a Christian, and had successfully prepared the way for

the arrival and reception of the Romish emissaries. By the king they were favourably received, permitted to take up their permanent abode in Canterbury, and publicly to establish their own religious rites. One year after his arrival, Augustine baptised the pagan monarch. Saxon temples were speedily converted into Christian churches. Christianity, which the Romans had attempted to hunt down, and the Anglo-Saxons had despised, now became the patronised religion. Elated with success, Augustine hurried to Arles in Gaul, where he was consecrated "Archbishop of the English nation," though, as yet, there was not a single bishop under his jurisdiction. It is evident, therefore, that he sought territorial as well as spiritual power. Why he obtained the designation immediately appears. 

### RESISTANCE OF THE BRITISH BISHOPS.

There were already very many English bishops in the country; but they recognised neither the monk nor his mission. The first effort of Augustine was to induce them to acknowledge both. For this purpose, he sought and obtained a conference with them. Seven of them met him once and again. At the first meeting, he endeavoured to bring them into conformity or unity with the Catholic church. To test the truth of the doctrines and practices of that church, "Let," said Augustine, "some infirm person be brought; and let "the faith and practice of those by whose prayers he "shall be healed, be looked upon as acceptable to God,

CHAP. I. "and be adopted by all." His test succeeded. A blind man was brought: over him Augustine prayed; and the blind, it is said, received sight.

Still the Britons delayed, and disbelieved. "We "cannot change our customs," said they, "until we "have obtained the consent and leave of the people." (Bede, 69.) A second synod was summoned. Augustine then said, "You act in many particulars contrary "to our custom, and yet, if you will comply with me in "these three points, viz.—Keep Easter at the due "time; administer baptism, by which we are born "again to God, according to the custom of the Holy "Roman Apostolic Church; and, jointly with us, "preach the Word of God,—we will readily tolerate all "the other things you do contrary to our customs."

This was their memorable reply:—"The British "churches owe the deference of brotherly kindness and "charity to the church of God, to the Pope of Rome, and "to all Christians; but other obedience than this we do "not know to be due to him whom you call Pope." "And as to our parts, we are under the jurisdiction of "the Bishop of Caerleon."* "To whom," says Bede (71), "the man of God, Augustine, in a threatening tone, "said, that in case they would not join in unity with "their brethren, they would be warred upon by their "enemies, and should at their hands undergo the ven-"geance of death." This was the first specimen of a coerced external unity.

* Rapin, i. 236.

## EVENTUAL SUBMISSION OF THE CHURCHES TO THE BISHOP OF ROME.



From this period commenced the conflict between the bishop of Rome and the English churches. He, to be supreme; they, to retain their self-government. The struggle continued until the year A.D. 669, when Theodore, Augustine's sixth successor, came, under another direct appointment from Rome. He was sixty-six years of age when appointed, by the Pope, archbishop of Canterbury, and was considered a man of literature and of mental energy. He arrived, 27th May, 669. Soon after, he made a visitation of his province, wherever the tribes of the Angles inhabited. By them he was well received, so that under him, eventually, the English churches were brought to submit to Rome. He was the first archbishop whom they all obeyed as their head, and the delegate of the Pope.

A.D. 669.

To return to Augustine. The position which at his first entrance he was able to assume, emphatically favoured his mission. He went direct to Ethelbert, whose wife, Bertha, had upon her marriage stipulated the privilege of maintaining, in her own circle, the various ordinances of Christianity. She was surrounded with a bishop and domestic priests, whom she had brought with her from Gaul. These had proved themselves excellent pioneers; they now became invaluable as Augustine's auxiliaries. Rome kept up a confidential intercourse with the ardent missionaries. All her experience was placed at their service. Ethelbert

CHAP. I. having become the convert, soon avowed himself the patron of Augustine. Instead of being surprised at his success, our wonder would have increased had it not been as great—especially as human aid was not the only agency he employed. He pretended to work miracles. True, he could not at first induce men to believe in his miraculous powers; but that the pretension was eventually recognised, appears from what Bede states was the inscription upon Augustine's tomb. This is the epitaph :—

"Here rests the Lord Augustine, first Archbishop of Canterbury, who "being formerly sent hither by the blessed Gregory, Bishop of the city of "Rome, and by *God's assistance supported with miracles*, reduced "King Ethelbert and his nation from the worship of idols to the faith "of Christ; and having ended the days of his office in peace, died the "26th day of May, in the reign of the same king."

Augustine died A.D. 604. Had this missionary from Rome confined his efforts to the propagation of Christianity among Saxon pagans, we should have restricted our examination of his merits to the results of his mission. But he came as an importer of laws as well as the herald of peace. These laws have spread themselves over every succeeding age, become inwrought into nearly all our national institutions, and by their persecuting character created the benumbing influence against which the religion of the Son of God has, more or less, ever since had to contend.

# CHAPTER II.

## THE VARIOUS KINDS OF CHURCH LAWS.

Augustine a legislator as well as a missionary.

§ 1. The introduction of *Roman Law* into Britain.
Its character, in respect of religion, borrowed from pagan laws.
Its influence upon civil rights, as now administered in Ecclesiastical Courts and Chancery.

§ 2. Establishment of *Canon* Law.
Source of its authority from Popes, councils, and synods.
Condemnation of, by statute.
Still in force.

§ 3. *Statute and Common Law.*

§ 4. *Theological compilations* having legal sanctions, viz., the Thirty-nine Articles and Book of Common Prayer.

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CHAP. II.

Augustine was no sooner established as an ecclesiastic than he undertook the office of legislator. Speaking of Ethelbert, Bede, the Saxon historian, lib. ii. cap. v., tells us, "Among other benefits which "he conferred upon the nation, he also, by advice of "wise persons (the Witena Gemot, or Supreme Legis-"lative Assembly), introduced judicial decrees, after "the Roman model. Among these, he in the first "place set down what satisfaction should be given by "those who should steal any thing belonging to the "church, the bishop, or the clergy, resolving to give "protection to those whose doctrine he had embraced."

SECTION I.—ROMAN LAW.

CHAP. II. Sect. 1.

"The Roman Model," in other words, the Roman or civil law. This was divided into several departments; one was styled the "*jus sacrum*," or pontifical law. It treated of religion, the rights of marriage, oaths, sepulture, the times of pleading in courts of justice, and many other matters deemed sacred. One principle ran through the whole of this code — the admixture of monarchical with ecclesiastical authority. It had been incorporated into all the religious institutions of pagan Rome.

The city had not been founded forty years before Numa Pompilius became the second monarch. He, previous to his election, had been a philosopher, dwelling amid woods and fountains, deemed at that period sacred. His first regal act was to regulate the priesthood. He divided it into eight classes, assigning to the highest class the designation of *pontifices*. These he constituted into a college, whose jurisdiction extended to all religious or sacred things. The emperors were, therefore, styled "Pontifex Maximus," and were the centre of all sacred as well as secular authority. The designation of Pontifex they might and did occasionally delegate to subjects, by whom the office was eagerly sought, as it was the highest office in the state; just as with us, in the present day, the Archbishop of Canterbury is the chief *permanent* delegate of royal power.

Augustus was the first Roman emperor who assumed

the title of Pontifex Maximus. He did this in the 735th year of Rome, thirteen years before the Christian era. It was retained by his successors for nearly 400 years. But Gratian, thinking it inconsistent for a Christian monarch to bear the title of a pagan high priest, by a decree refused the title, 375 years after Christ. But though the title was dropped by the emperor, the *principle* remained in the law.

It would have been unwise in Augustine to establish the *whole* Roman code at once. It therefore was gradually adopted. This model has even, at various times, supplied our own English parliament with the motive and the form of different statutes. It still pervades many of our laws in relation to property and civil rights; it is the basis of all our ecclesiastical laws; and it mainly regulates to this day the practice of the spiritual courts; and in many respects governs the chancery courts as well.

The study of this code has invariably been an object of prime solicitude with the clergy. "They prepossessed," say the Commissioners on Real Property, "Richard II. in its favour; and under his auspices, or "at least during his reign, they converted the chancery "office into a court, modelled it according to the civil "law, forged for it a process, and gave its ecclesiastical "judge the civil code to administer with discretion, "under the name of equity."*

* Fourth Report of Commissioners on Real Property.—Appendix, 475.

## SECTION II.—CANON LAW.

CHAP. II. Sect. 2.

The second branch of ecclesiastical jurisprudence is the canon law. This sprung out of the ruins of the Roman empire. The bishops of Rome had been held in profound esteem as residents in, and in a great measure presiding over the government of the imperial city. They had set up their own laws, first in juxtaposition, and afterwards in opposition, to those of the Roman emperors. Under the influence and authority of successive Popes, they were at length consolidated by a monk called Gratian, about A.D. 1150, and everywhere throughout Europe obtained power. To these have been added laws adopted in general councils of the church, together with many others made in provincial and diocesan councils or synods, held in this country under the authority and sanction of the Pope's legates,* archbishops, and bishops.†

One principle pervades canon law; it is the employment of the civil power in enforcing spiritual obligations. So early as A.D. 958, we discover this anoma-

* Legates are of three kinds:—*Legati à latere*—cardinals sent by the Pope, from his own immediate presence; *Legati nati*—legates born; such were the ancient archbishops of Canterbury, to whose archbishopric legative power was annexed; and *Legati dati*—such as had authority from the Pope for a distinct purpose, mentioned in some special commission.

† "The *canon* law hath the same lineaments and features as the civil "law, being framed to render the Pope in the church what the Emperor "was in the state. And it must be owned they are both perhaps more "for the ease of the governors; but not so convenient for the governed." —*Burn.*

lous and hurtful principle. In the reign of Edgar, we have this canon, or provision as it was called, which King Edgar "made to the praise of God." It runs thus:—"Let the bishop be at the county court and "also the earldoman, and there let each of them put in "use both God's law and the world's law." Thus, the church was to bolster up the magistrate by ecclesiastical censures; and the magistrate back the bishop by civil punishments.

Canon law. A.D. 958.

This combined rule of government the church was the first openly to avow. In King Edward the Confessor's time, we find the principle of consolidation enunciated and enforced. "If any one out of arrogance "will not be brought to satisfaction in the bishop's court, "let the bishop notify him to the king, and let the king "constrain the malefactor to make satisfaction where the "forfeiture is due; that is, first to the bishop, then to "himself; *so there shall be two swords, and one sword shall "help the other.*" This was the language of the church.* The response from the state was as explicit. It silently acted upon the principle for nearly 500 years, without an *express* legal recognition. This eventually was done in the time of Henry VIII. Much as he disliked the Pope, he had no objection to adopt some of the pontifical laws. The 24th Henry VIII., cap. 12, declared, that in respect "of the spiritualty and the temporalty their "authorities and jurisdictions do conjoin together in the "due administration of justice, the one to help the other."

A.D. 1064.

* Johnson's Ecclesiastical Laws.

CHAP. II. Sect. 2.

Canon law.

That these old canons are binding upon the laity as well as the clergy appears from an unrepealed statute. The 25th Henry VIII., cap. 21, says, "that such "canons, constitutions, and ordinances being already "made, shall still be used and executed." It goes still further, and recognises the canon law "as having by "the sufferance of the English monarchs *obtained among* "*the people, who have bound* themselves by long use and "custom to the observance of the same." This is a recognition of the authority of foreign canon law in this nation, on the foot of usage and custom, to which this clause adds a *parliamentary* sanction to our own canons.— *Gibson*, ii. 985.

But though the act recognised, it at the same time emphatically condemned them.* It was clearly the intention of the legislature to banish both the pontiff and his code of laws. We shall presently see that the act gave a pledge to this effect. Commissioners were appointed "to search into and determine which of "these canons shall be abolished, made void, and of "none effect." It went on to say, "till such time" as this was done, "all the canons and constitutions not "contrary or repugnant to the laws, statutes, and "customs of this realm, nor to the damage or hurt of "the king's prerogative royal, shall remain in full "force, and be used and executed as they were afore "the making of this act."

* They are described as "much prejudicial to the king's prerogative "royal, repugnant to the laws and statutes of this realm, and also over-"much onerous to the king's highness and his subjects."

These commissioners went to work, but Henry having died during the examination, the commission ceased. Edward VI. renewed the commission, under which the then commissioners completed a new code, bearing the designation of *Reformatio Legum Ecclesiasticarum;* but before this book was confirmed by parliament the young monarch also died. The reason why the abolition was not *immediate*, is stated to have been from "the shortness of time of the session "of this present parliament—so that the laws could not "be viewed, examined, and determined." The rules by which the commissioners were to base their decisions were stated to be "the laws of God and the laws "of this realm," implying that some of the canons were contrary to both.

It might have been supposed that a branch of jurisprudence so emphatically and repeatedly condemned, would before this time have been "made void and of "no value." Protestantism has not, however, perfected the work chalked out by a Catholic monarch, in Catholic times, and by a Catholic parliament. It is true, an attempt was made by Archbishop Parker, in the time of Elizabeth, to complete the onerous task. The statute of Henry VIII., however, remains unrepealed and unsatisfied. So that the legatine laws, enacted by the Pope's legates—Otho, in 1237, and Othobon, in 1268—all of which were reported to the respective Popes, whose ratification finally gave to them living power—are to this day received as part of our own domestic constitutions, and parcel of the

CHAP. II. Sect. 2. Canon law.

common law of the church. As such they may be enforced upon all classes, simply because all classes have been alike careless as to their abolition.

The unredeemed pledge recorded in the above act of Henry has for three centuries slumbered on the pages of the Statute Book; and there it will slumber on, "till such time" as the people, in a voice "louder "than the sound of many waters," demand that, at once, totally, and for ever, these laws be abolished. Why has not an indignant people thrown these remnants of Rome spiritual amid the scattered ruins of Rome imperial? A learned canonist shall give the reply:— "One reason" (says Burn on "Supremacy") "why a "reformation of the ecclesiastical laws was never "effected, seemeth to have been, because it conduced "more to the advancement of the supremacy to retain "the church in an unsettled state, and consequently "more dependent on the sovereign will of the prince."

There are, however, certain exceptions as to canon laws. Those made in the year 1640 were, by the 13th Charles II., cap. 12, sec. 5, refused confirmation, as also "all other ecclesiastical laws or canons not "confirmed, allowed, or enacted by parliament, or by "the established laws of the land as they stood in the "year 1639." A still more remarkable refusal to confirm a *foreign* canon took place in 1235, when the bishops asked the lords to allow a constitution of Pope Alexander III., which legitimated children born *before* the marriage of their parents. But the lords "refused to "change the laws of the realm."—21 Henry III., c. 9.

## SECTION III.—STATUTE AND COMMON LAW.

The third branch of ecclesiastical jurisprudence is the common law and the statutes of the imperial parliament.

These are the supreme authority. They ride over every other source of judicial power, be it canon law or pontifical authority. The state has not, however, yet asserted the supremacy of its *executive* power. It still tolerates independent and separate sources of law. Thus, it not only admits the pontifical or Roman model, and the canon law, in matters both spiritual and secular, but it permits archbishops and bishops to appoint their own judges, advocates, and proctors; to require from them an oath of obedience to their lawful commands; and to hold over them, *in terrorem*, the power of removal at pleasure. This latter is a power which does not now pertain to the crown, without the decision of both houses of parliament. So long as these ecclesiastical prerogatives remain, the mitre is placed upon a separate and higher pedestal than the crown.

The ecclesiastical laws are, it is true, in several acts, styled "the *king's* ecclesiastical laws," and are said to be administered by "the king's ecclesiastical judge."—(2nd and 3rd Edward VI., c. 23.) But it is contended by Bishop Gibson (Vol. ii. p. 969) "that these words "do not imply that the church receives its laws, "or appoints its judges, by authority derived from the "state. They are rather," he says, "the recognition of

CHAP. II. Sect 3.

Statute and common law.

"the spiritual power of the church, delegated by the "laws of Christ. As proof, the archbishop inquires of "every bishop whom he consecrates, whether he will "correct and punish evil doers according to such "authority as you have by 'God's Word,' and as to you "shall be committed by the ordinances of this realm?" The bishop must surely have forgotten that this form proves nothing. It has itself been provided by a secular law, and may at any time be set aside.

## SECTION IV.—THEOLOGICAL COMPILATIONS.

A fourth source of authority is derived from certain theological works, adopted in convocation, and confirmed by parliament. These are—(1.) The Thirty-nine Articles "agreed to in convocation holden at "London, in the year 1562, for the avoiding of diversi-"ties of opinions, and for the stablishing of consent "touching true religion." These articles form the legal authority of the church, as to its reformed *faith*. They were afterwards, by the 13th of Elizabeth, cap. 1, sec. 1, confirmed by parliament, and again ratified by Queen Elizabeth, after "having been deliberately read "and confirmed again by the subscription of the hands "of archbishops and bishops of the upper and nether "house, in 1571." (2.) The Book of Common Prayer, which prescribes the rites of making and consecrating deacons, priests, bishops, and archbishops. Various changes have at different periods been made in this manual of devotion. The *last* Act of Uniformity is the

14th Charles II., cap. 4, and declares the present book to be "agreeable to the word of God, and the "usage of the primitive church;" it is the only legal formulary "of the administration of sacraments, rites, "and ceremonies of the church of England," and constitutes the standard of appeal of the church as to its reformed *practice*. These two compilations form the *legal* basis of the Reformation.

Such are the sources of ecclesiastical law. They are varied and confused. To the ignorant and unreflecting this may be matter of indifference, if not of contempt. To the thoughtful and conscientious, it must occasion deep regret.

"How unlike the complex works of man
"Heaven's easy, artless, unencumbered plan."

The word of God is, of itself, sufficient for all purposes of faith and practice. And, therefore, as the sixth Article (1562) declares, "that whatsoever is not read "therein, nor may be proved thereby, is not to be "required of any man that it should be believed as an "article of faith, or be thought requisite or necessary "to salvation;"—it would surely have been much more in harmony with common sense, and those Scriptures themselves, to have had but this one, and only infallible standard of religious government. It is true that, in questions of heresy, "the Scriptures" are, by the 1st of Elizabeth, cap. 1, sec. 36, to be appealed to as authority. But they are clogged by an association

CHAP. II. Sect. 4.

Theological compilations.

with "the four first general councils* or any of them, "the consent of parliament, and the convocation." Still, even this is better than the previous law. By the canon of A.D. 1408, "the decrees of the church" were the only criteria of heresy. Whoever preached or taught anything contrary to these, was declared an heretic, and all his goods were confiscated, unless he recanted in the parish church of the place where he had taught the error.

* "General councils are not constituted by a Divine authority, since we "have no direction given us from God, by which we may know what "they are, and what is necessary to their constitution; and we cannot "suppose that God has granted any privileges, much less infallibility, "which is the greatest of all, to a body of men, of whom, or of whose "constitution, he has said nothing to us."—*Bishop Pearson on the Thirty-nine Articles* (21*st*), page 201.

# CHAPTER III.

## CHURCH LAWS IN RELATION TO THINGS CIVIL.

§ 1. Sacrilege—or stealing goods from a church, or priest.
Reason for making this the first act of legislation.
Abolition of, after an existence of nearly 1200 years, illustrative of the slow progress of legislation.
§ 2. Sanctuaries—origin of; abuses of; abolition of.
§ 3. Exemption of priests from civil authority.
Conflicts between the Church and the State.
Abolition of.
§ 4. Striking the clergy; double penalty for; abolition of.
§ 5. Benefit of clergy—What?
Remarkable instance of an *ex post facto* law, taking away the privilege.
Women excluded from it.
§ 6. Regalia—as to
Coining, pardons, counties palatine, treasure trove, wrecks at sea.
§ 7. Professions and trades.
§ 8. Judicial powers in secular things. As to Marriages. Wills.
§ 9. Tithes.
§ 10. Usury.
§ 11. Weights and measures.
§ 12. Slaves.
§ 13. Taxation.
§ 14. Burial.
§ 15. Infliction of death.
§ 16. Purgation, and the oath *ex officio*.

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### SECTION I.—SACRILEGE.



It might have been supposed, that a religious body would have commenced the work of legislation by some

CHAP. III. Sect. 1.

Sacrilege.

enactment relating to spiritual matters. Instead of this, they began with the *property* of priests and the church. A distinction was established between those possessions which were deemed sacred and those acknowledged to be common. This distinction was a remnant of pagan superstition, and had run through the Roman law. Its design was to frighten the ignorant devotee, and to exalt the cunning ecclesiastic. It is obvious, there is no *real* difference between the property of priests, and that of physicians, lawyers, or other men. But Augustine had not been five years in Britain before he induced Ethelbert to pass a law relative to *church* goods. It is as follows.

Canon, A.D. 602.

"These are the dooms (laws) which King Ethelbert "established in the days of Augustine:—

"God's fee, and church fee, is a twelve-fold mulct."

Fee here signifies, not land or inheritance, but money, goods, or chattels. Whoever should steal any of these, belonging "to God or the church," was fined twelve times; whereas, had he stolen the same property from a layman, he would have been fined only nine times its value. This distinction recognised a principle of first-rate magnitude; a pre-eminent protection over property involved the pre-eminent position of its owners. These claimants of superiority carried out their principle still further. According to rank among themselves offenders were fined. Thus—

"The *bishop's* fee, is an *eleven*-fold mulct.

"The *priest's* fee, is a *nine*-fold mulct.

"The *deacon's* fee, is a *six*-fold mulct.

"The *clerk's* fee, is a *three*-fold mulct.

"A church's peace, is a *two*-fold mulct."

The "peace" here referred to was the quiet enjoyment of the service of God without molestation. For nearly one hundred years, this pre-eminence of privilege was exercised by the church. At length a law declared:—"Let the protection of the church, and A.D. 696. "also of the king, be fifty shillings."

That is, the church and the state exacted similar fines for the same offences. Still, the church claimed a priority of civil right; we therefore read,

"Whatever pleas are held in the court of the king, A.D. 1064. "or of any other person, if the bishop's messenger "come thither, and open a cause that concerns holy "church, let that be first determined. For it is fit that "God be everywhere honoured before others."

Illustrations upon this matter might be multiplied. Those adduced are sufficient attestations of the arrogance of the priesthood, and the prostration of the secular power.

All the laws relating to sacrilege have been swept away by an act of modern legislation. The 5th and Statute A.D. 1835. 6th William IV., cap. 81, vests the goods and chattels of churches in their churchwardens, and places them under the same laws as relate to property in general.

One expressive lesson is taught by these facts. It appears that twelve hundred years elapsed, before the now manifest absurdity of making a distinction between the goods of the castle and those of the church entirely ceased. So slowly do legislators act, or the people progress.

## SECTION II.—SANCTUARIES.

CHAP. III. Sect. 2.

Paganism, as well in its rudest forms, as in its more civilised developments, provided a refuge for culprits. Justice has often been seen to slacken its pursuit after offenders. It has itself opened a door for a temporary escape from personal revenge. It has even stepped aside, while criminals hurried on through the gates mercy had provided to places deemed sacred. The Justinian Institutions* gave protection to slaves and others who fled to temples for safety. The men who inwrought Roman laws into British customs were anxious that Christianity should appear not less merciful than paganism. The Christian church recognised the custom, and gave to it the sanction of law. The first canon upon this subject says,

Canons, A.D. 693.

"If any one is guilty of a capital crime, and flees to "the church, let him have his life; but let him make "satisfaction, as right directs. If any forfeit his hyde, "(*i.e.* his land held under feudal tenure, which placed him "at the mercy of his lord,) let his laches (punishment for "negligence in fulfilling conditions) be forgiven him."

A.D. 740.

By virtue of this law, supposed criminals and helpless tenants might at any moment hide themselves from the merciless grasp of monarchs, or the cruel tyranny of barons. The church provided a refuge midway between the palace and the castle. It was then the only national asylum.

* Lib. I. tit. viii. sec. 2.

Under such circumstances, we are not surprised to find that ecclesiastics adroitly availed themselves of what could not but be a popular feeling—viz., a determination to keep churches in repair. The Jews would have been as likely to allow the high roads to the cities of refuge to become impassable, as that Anglo-Saxons should suffer their churches to fall into ruins. The canon of this year declared, therefore, "All people "ought of right to assist in repairing the church." A.D. 1018

This privilege of sanctuary was constantly abused. In the time of Edward the Confessor, as he is called, a canon passed, which greatly enlarged the right, and opened the way for its becoming dangerous. It says, A.D. 1064.

"Whenever a guilty or noxious person flies to the "church for safety; let him be seized by no person, "after he is in the churchyard. And if he flees into "the house or court of the priest, he shall have the "same security or protection as in the church, so that "the house or court stand on church ground."

The effects were most calamitous. Not only did murderers, robbers, and other criminals, flee to the churches for sanctuary; but fraudulent creditors betook themselves to the same place. The 50th Edward III., cap. 6, states, "That divers people do "give their tenements and chattels to their friends, to "have the profit at their will; and after, flee to the "franchise of privileged places, and there live with an "high countenance of another man's goods." Statute, A.D. 1376

Still the evils remained. The 3rd Henry VII., cap. 4, effectually prevented such frauds, by declaring Statute, A.D. 1488.

CHAP. III. Sect. 2.

Sanctuaries.

"that all deeds of gift, of goods and chattels made in "trust to the use of that person, shall be void." This law is still in force, and applies to all deeds. Sanctuary, however, continued. Henry VIII. curtailed it, by reducing the number of sanctuaries, restricting the time it was to last, and making other regulations, the operation of which tended materially to abate the nuisance; but it was not until the 21st of James I., cap. 28, sec. 7, that the statute declared "that not in "any case should sanctuary be admitted or allowed."

Statute, A.D. 1624.

Here again we are met by another illustration of the slow and gradual process by which evil customs are removed. More than nine hundred years elapsed before a rite which partook of an admixture of Jewish and pagan origin, was wholly removed from the Christian church. And, even then, several years were spent in bringing about the abolition.

It is now necessary to advert to one of the mightiest struggles between the *legislation* of the church and that of the state.

## SECTION III.—THE EXEMPTION OF PRIESTS FROM THE CIVIL AUTHORITY.

Clerical exemption from civil arrest and punishment.

This extraordinary claim had, from a very early period, been made and admitted. Like every other church privilege, we trace its first manifestation to canon law. The earliest is found in "The Excerptions "of Ecgbriht, archbishop of York, collected out of the "sayings and canons of the holy fathers." The sixteenth

Canons, A.D. 740.

law in this code says:—"That no priest sue in the "secular courts, relinquishing his own law," *i.e.* the bishop's court.

Exemption of priests from civil authority.

This was a rule made by Northumbrian priests, and applied to civil affairs. Criminal priests were also, by a provincial canon made by Boniface, placed under the custody, and were to be tried by their bishops. A special injunction ordained—

"That every bishop have one or more prisons in his "bishopric, for the safe keeping of clerks caught in a "crime, or convicted of it." A.D. 1261.

Later down, similar laws were passed. The state not only recognised, but by express statute preserved to the church this ancient privilege, which, by the 9th of Edward II., cap. 15, was pronounced "a laudable "custom of the realm, heretofore used." Statute, A.D. 1315.

The constitution of Archbishop Islip contains a complaint, that "secular judges put their scythe more "usually into God's harvest, notoriously exceeding the "bounds of their judicial power; and usurping a power "over the Lord's bishops, who are by no law subject to "them, in criminous cases; so that even priests are for "misdeeds put to shameful and unwonted death, to the "contempt and scandal of God and holy church, and "the grievous hazard of their own souls." Canon, A.D. 1351.

The next quarter of a century seems to have been employed in devising means by which priests might altogether avoid arrest. In the 50th Edward III., cap. 5, it is said, "the clergy complain that divers priests, bearing "the sweet body of our Lord Jesus Christ to sick people, Statute, A.D. 1376.

CHAP. III. Sect. 3.

Exemption of priests from civil authority.

" or while they attend to divine services in churches, " churchyards, and other places, dedicate to God," were " arrested by authority royal in offence of God " and of the liberties of holy church, and also in dis- " turbance of divine services." The act then declared priests free from arrest, " so long as they were so " employed," or were " within places dedicate to God."

This double right of sanctuary (viz., being within holy places, or elsewhere employed " in divine offices") did not, however, answer all the purposes of the then priesthood. One year after (1st of Richard II., cap. 15), another act passed. It is, perhaps, one of the most expressive illustrations of manifest jesuitism recorded in the Statute Book. This latter act refers to the former, and employs nearly the same terms. They were, however, most dexterously transposed, and, by introducing four or five additional words in the transposition, priests were wholly freed from arrest. These are the terms employed:—

A.D. 1377.

" Because that prelates do complain that people of " holy church be arrested out of churches and their " churchyards, and *also in other places*, although they be " bearing the body of our Lord Jesus Christ to sick " people; it is ordained, that if any minister of the " king or other do arrest any person of holy church " *by such manner*, he shall have imprisonment, and " then be ransomed at the king's will, and make gree " (satisfaction) to the parties so arrested."

By inserting " other places," and omitting " dedicate " to God," and then coupling " other places " with

"such manner," the desired object was gained. "People "of holy church" were wholly exempt from all process of the civil or criminal courts.

Exemption of priests from civil authority.

In what manner this legalised outrage upon the well-being of society and the honour of religion operated, is evident from the authentic records of that age. Not that priestly felons altogether escaped. Had they been permitted to roam at large, the evils would not have been so great as the legal mock trials to which they were now subjected. Let the reader take, as proofs, two laws—one canon, the other statute. The former prescribed a process called purgation. "Let the priest purge himself by his own veracity "(oath), by saying thus, in his holy vestment, before "the altar: 'I say the truth in Christ; I lie not.' "Let the deacon purge himself in the same manner." This plea of not guilty liberated the criminal! The other proof is derived from the Statute Book. It is the 1st of Edward III., cap. 12, in A.D. 1327, and says, "divers clerks, after their deliverance from the "king's courts, do sue in the spiritual courts such "indictors (accusers) for having defamed them, to the "great damage of the indictors. Wherefore many "people be in fear to indict such offenders!" Could justice ever have received a greater outrage, morality a deeper stain, or religion a more effectual check? The state, therefore, performed good service by prohibiting, in future, such actions for defamation. It had, however, still to struggle hard to purge itself from this intolerable encouragement to crime.

Canon, A.D. 696.

CHAP. III. Sect. 3.

Statute, 3rd Edward I. cap. 2. A.D. 1275.

During the reign of Edward I. the statute "admo-
"nished the prelates, and enjoined them, upon the faith
"that they owe to the king, and for the common profit
"and peace of the realm, that they abate" the nuisance,
"so that *the king* shall need not to provide any other
"remedy therein." Still the evil remained. More
than one hundred and twenty years elapsed, and then,

A.D. 1402.

says the 4th of Henry IV., cap. 3, "The Archbishop
"of Canterbury, for himself and all the other bishops
"of his province, hath promised to our lord the king,
"that henceforth any clerk, secular or religious, con-
"victed of treason and other felonies, shall be treated
"according to the constitution made in 1351, which
"constitution was to have been shewn to the king
"before this next parliament, in order that, if insuf-
"ficient, some other remedy might be provided."
Was it ever shewn? Never. The fact of its having
slumbered under the forfeited faith of the archbishop
and all his other bishops, is attested by the 23rd

Statute, A.D. 1532.

Henry VIII., cap. 1, sec. 2. It says, "this constitution
"was never shewn or notified by the prelates, but con-
"tinually manifest thieves and murderers, found guilty
"before the king's justices, were, by the usages of the
"common laws of the land, delivered by such justices
"to their bishops as clerks convict, who were speedily
"and hastily set at large by the ministers of the said
"ordinaries for corruption and lucre, to the great
"slander of such as pursue the misdoers, and to the
"pernicious example, increase, and courage of such
"offenders." More than this. As these criminous

Exemption of priests from civil authority.

priests often broke out of their bishop's prisons, they were, for "so breaking and escaping out of prison," declared felons; the offender was to be delivered (supposing he could be caught) to the king's justices, who "were to deliver judgment against him, like as they "might do in case the same offender *had been a* "*layman.*"

This latter clause, it will be observed, points in the right direction. It is the first enunciation of a common-sense principle of punitive justice; viz., that all men, be their class what it may, shall be amenable to the same law, for the same crime. But it was nearly ten years before this principle was embodied in the statute. The 28th Henry VIII., cap. 1, sec. 7, subjected "persons within holy orders, who might be "convicted by the king's justices of criminal offences, "to all such pains as lay persons admitted to their "clergy." Ecclesiastic and laic were now amenable to the same laws. Both, however, were allowed what was called "benefit of clergy;" and this privilege, so far as it applied to the ecclesiastic, rendered the law a dead letter. He, *after* his conviction, as well as any other criminal, could plead, not as formerly he might, that he was "in holy orders;" but that he "could read "as a clerk." The fault here lie in retaining the privilege for any one.

A.D. 1542.

Statute, A.D. 1547.

The Reformation brought in a law which exhibits the painful fact, that slavery still existed in this country, and that such was the detestation in which a slave was held, that a "clerk convict" was reduced to his

CHAP. III. Sect. 3.

Exemption of priests from civil authority.

degraded condition. The 1st Edward VI., cap. 3, declares that criminous priests were to be kept in prison, unless "any manner of person would be bound in £20 "to the king, with two sufficient securities, to keep "such clerk as his slave five years." Like another slave, "he was to be fed with bread, water, and small "drink and refuse meat." His master might "cause "him to work by beating, chaining, or other such "work and labour as he shall be put to, be it never so "vile." Upon such security, the bishop was discharged any further custody of the clerk.

A.D. 1550. By the 3rd and 4th Edw. VI., cap. 16, English slavery ceased.

A.D. 1575. The 18th of Elizabeth, cap. 7, required that clerks convict should be burned in the hand, and imprisoned.

A.D. 1825. But it was not until the 6th Geo. IV., cap. 25, sec. 3, that persons in holy orders became liable to be tried by the authority and laws of the king, rather than by those of the bishop. Here, again, is another remarkable illustration of the slow, silent, but yet sure, progress of enlightenment. More than one thousand years elapsed, ere the church could have removed from her grasp the sword of justice she swayed over her own sons. One clerical privilege, however, remains to be considered. It is nearly as ancient as the one just referred to.

### SECTION IV.—STRIKING THE CLERGY.

He who committed this offence incurred a double penalty. This is contained in statute 9th Edw. II.,

cap. 3, which says, "If any lay violent hands on a "clerk, the amends for the peace broken shall be "before the king, and for the excommunication before "the prelate." The same offence might be punished by the magistrate as an assault; and by the spiritual judge, as a cause of correction.*

CHAP. III. Sect. 4.

Statute, A.D. 1315.

## SECTION V.—BENEFIT OF CLERGY.

This was an ancient privilege pertaining to felons. After their conviction, if they pleaded and proved that they could read as a clerk, although not in holy orders, they were not hanged. The assumed reason for this privilege was to encourage learning. If so, knowledge would have hazarded morals. But the privilege was granted in honour of the church. Men had but to resemble priests, in the mere mechanical process of reading or writing, and they at once escaped the more condign punishment that otherwise would have fallen on their heads. The most remarkable instance of an *ex post facto* legislative enactment was in a case of murder, committed by James Grame, yeoman, upon Richard Tracy, gentleman, his master, at Brentwood. By the 12th Henry VII., cap. 7, (A.D. 1497), he was ordered to be hanged, "notwithstanding his demand of "the privilege of his clergy."

We are not surprised to find the absurd privilege abused. The 4th Henry VIII., cap. 2, declares that

Statutes, A.D. 1513.

* This has been repealed by the 9th Geo. IV., cap. 31, sec. 1. A.D. 1828.

CHAP. III. Sect. 5.

Benefit of clergy.

" murders daily increase more and more, because the " persons so offending bear them bold of their clergy." And it is not a little extraordinary that the privilege, for many centuries, extended only to *men*. The 21st James I., cap. 6, says, " Whereas, by the laws of this " realm, the benefit of clergy is not always allowed to " women convicted of felony, *by reason whereof, many* " *women do suffer death for small causes.*" These were, therefore, henceforth to have the benefit of being branded " in the brawn of the left thumb with a hot " burning iron, with the mark of the Roman T; the " said mark to be made by the jailer, openly in the " court, before the judge."

A.D. 1624.

Had not humanity been tied down by a ridiculous custom, derived from a degrading homage to a particular and then pre-eminent class, the law would, more speedily than it did, have asserted " the perfec- " tion of human reason;" and at once cleared itself from a participation in a custom, the very acmé of folly, injustice, and irreligion. It required, however, the dawning light of the nineteenth century, to expose the judicial absurdity. The 7th and 8th of Geo. IV., cap. 28, sec. 6, cut away, from *every* criminal, the plea of benefit of clergy. By this act the custom was abolished.

A.D. 1827.

That this and other ecclesiastical immunities should so long have prevailed, will cease to excite surprise, when we consider that the church exercised higher privileges.

## SECTION VI.—REGALIA.



Many of the prerogatives of the crown were, in ancient time, shared by the church. Among these was the right of coining money. The canon enacts there shall be, "at Canterbury, seven coiners; four of the king's, "two of bishop's, and one of abbott's." Other sees enjoyed similar privileges, all of which have long since ceased.

Coining.

Canons, A.D. 925

Another royal prerogative consisted in the grant of pardons for capital crimes. Murder was designated by church law "a greater *sin*;" and therefore "we reserve "absolution from wilful murder, whether public or "private, to the bishops only. By which we intend to "curb the boldness of inferiors, and not lessen the "reverence of superiors."

Pardons, A.D. 1281.

But if ecclesiastics pardoned offences committed by members of the state, parliament, it seems, was equally ready to grant forgiveness to priestly felons. We could scarcely have brought ourselves to believe the facts of the case, had not an act of the legislature been extant upon this point. It is the 27th of Henry VI., cap. 6, and says, "Forasmuch as many priests were "grievously and wrongfully vexed by indictments of "felony, our sovereign lord the king, with the consent "of this parliament, considering the premises, and for "that the clergy having in the last convocation granted "to the king a subsidy to be taken of every priest of "six shillings and eight pence, hath pardoned and "acquitted all and every priest, as well religious as

Statute, A.D. 1448.

CHAP. III. Sect. 6. Regalia.

"secular, of all felonies of rape *(feloniis de raptu)* done "before the 1st of June, in the 27th year of his "reign."

The grant of pardons continued to spread immorality and crime through the land. To the church they produced immense wealth, which certain travelling priests, called questors, managed to collect into their own pockets, rather than deliver into the coffers of the Pope. These, although by the general council of Lateran (A.D. 1215) recognised and encouraged, were now, in the provincial synod of York, denounced. It says, "Some questors, with extreme impudence, and to "the deception of souls, have granted indulgences to "the people; from a motion of their own, have dis- "pensed with vows; have absolved from murders, "perjuries, and other sins; have remitted what has "been stolen, for an uncertain sum of money given to "them; have relaxed a third part of penances enjoined; "have falsely affirmed that they have drawn three or "more souls of the parents and friends of those who "have given them alms out of purgatory, and conveyed "them to the joys of paradise, and, to use their own "words, have absolved them from all punishment and "guilt." "Clement the Pope hath therefore wholly "forbidden such abuses," and "we will and charge "these questors to show their letters apostolical to "the bishop, and a schedule of the indulgences [to be "preached] in writing annexed to their letters." Removal was the punishment of transgression. Rectors, &c., who admitted any such questor to preach, contrary to

Canon. A.D. 1466.

this new law, were "to pay forty shillings to the fabrick "of York church." What feebleness of folly! It continued, however, to weaken the nation and disfigure Christianity for nearly another century.

Statutes, A.D. 1536 and 1541.

At length, the state put an effectual stop to the monster evil. The 27th Henry VIII., cap. 24, declared "that divers antient prerogatives of justice appertaining "to the crown, have been severed therefrom." "For "reformation whereof it is enacted that no person or "persons, of what estate or degree soever they be, shall "have any power to pardon or remit any treasons, "murthers, manslaughters, nor any kind of felonies "whatsoever; but that the king's highness, his heirs "and successors, shall have the whole and sole power "and authority thereof united to the imperial crown of "this realm." And right well did the nation and religion profit by the change. So much so, that within five years after the passing of the act, "the profits "and emoluments which arose from indulgences and "pardons, had now decayed and diminished."—32 Henry VIII., cap. 22, sec. 3.

Counties palatine.

There were other royal privileges which the church continued to exercise long after the passing of the above act. Certain places within the jurisdiction of bishops were possessed of powers *jurâ regalia*, or as Bracton (Lib. iii. c. 8, sec. 4) expresses it—"regalem "potestatem in omnibus." The bishops of Chester and Durham claimed these powers by prescriptive right and immemorial custom: Lancaster, then within the jurisdiction of Chester, by creation, in the time of

CHAP. III. Sect. 6. Regalia.

Edward III. Writs from the king's courts could not run in either of them, without being backed by the bishop of the diocese.

Similar powers were exercised by the bishop of Ely. That see was not strictly a county palatine, as were those of Chester and Durham ; but claimed its prerogative by virtue of a grant from Henry I., by which the bishop had *jurâ regalia*, within the isle of Ely.

They have all, however, one after another, been shorn of their powers. The first inroad made upon them was by the 27th Henry VIII., cap. 24, sec. 3, which provided that all "original writs, and judicial writs, "indictments, and every process upon the same, in every "county palatine, shall be made only in the name of "the king;" and by more recent acts they have wholly ceased.

Treasure trove.

Treasure trove, or money found in the earth, may yet be claimed by the bishop within whose limits it is discovered. "Treasures (canon, A.D. 1064) dug out of "the earth belong to the king, unless they be found in "a church or a churchyard; and though they be, yet "the gold and half the silver belong to the king, and "half to the church where it is found."

Canon, 1064.

Wrecks, &c.

Wrecks of the sea belong to the lords spiritual (1st and 2nd Philip and Mary, cap. 15) in Wales, as "lords marchers," who, as such, have all such "waste, "straife, infang-thefe, outfang-thefe, treasure trove, "deodands, goods and chattels of felons, and all such "wreck *de mere*, wharfage, customs of strangers, as the "lords spiritual and temporal have had and used."

The greater part of these feudal customs have, however, long since passed away.

The inquiry as to this interference of the church with secular things is not yet exhausted.

## SECTION VII.—PROFESSIONS AND TRADES.

*Physicians* were, at one time, interdicted from administering medical aid, until the priest had been called to attend to the sick or dying.

Canons, A.D. 1229.

"Upon pain of anathema, we forbid any physician "to give advice for the health of the body which may "prove pernicious to the soul. When it happens that "he is called to the sick man, let him first effec- "tually persuade him to call for the physician of the "soul, that when the sick has taken spiritual cure, "he may, with better effect, proceed to the bodily "medicines."

The sixteenth century fastened the chain which the thirteenth century had forged. Invalids were further placed at the mercy of the church, by physicians themselves being rendered dependent upon its sanction. The 3rd Henry VIII., cap. 11, prohibited any physician in London, or seven miles thereof, from practice, "unless he was first examined and approved by the "bishop of London." Country physicians were in like manner "to be examined and approved by the bishop "of the diocese, or his vicar-general." The absurdity was virtually got rid of by the 14th and 15th Henry VIII., cap. 5, creating the College of Phy-

Statute, A.D. 1512.

CHAP. III. Sect. 7.

sicians into a corporate body, who were themselves to grant licences to physicians.

Professions and trades.

Statute, A.D. 1464.

*Shoemakers* were, by the 4th Edward IV., prohibited "to pull upon the legs or feet of any person any shoes, "buskins, or boots, upon the Sunday, the Nativity, "or Ascension of our Lord, or upon Corpus Christi "day," under a penalty of twenty shillings.

By a singular provision in this act, "the dean of the "Free Chapel of St. Martin le Grand," and the whole of that then privileged spot, especially "St. Martin's-"lane" (over which the General Post Office is erected), were exempt from its operations. This was a "sanc-"tuary superior;" *i.e.*, it was a *royal* as well as an *ecclesiastical* asylum.

The church had, moreover, previous to the above act being passed, so stretched her power as to enclose within her grasp *every handicraftsman*. It declared,

Canons, A.D. 740.

"Tithes are the tribute of the churches and of needy "souls. The Lord, O man! demands tithes of that "whereby thou livest. Pay tithes of what thou gettest "by bearing arms, *by trade*, *by handicraft*. Our God "is not indigent" (pagans had so taught), "he requires "not gifts but honours."

A.D. 994.

"The same command is given to *mariners* and *land-"men*, and all who raise profit to themselves by dealing; "so it is enjoined to all men, that out of the same craft "from which they produce necessaries for the body, "they also produce necessaries for the soul." And

Canon. A.D. 1305.

"We ordain that all who gain profit by merchandise, "such as carpenters, blacksmiths, weavers, trunkmakers,

Professions and trades.

"and all other handicraftmen, pay their personal tithes." Victuallers were also liable.—(Canon, 1250.)

The statute was brought to sanction this tax. The 2nd and 3rd of Edward VI., cap. 13, and *which to this day is unrepealed*, requires "every person exercising "merchandise, bargaining and selling, &c. (day labourers "excepted), shall pay, for his personal tithes, the tenth "part of his clear gains."

Statute, A.D. 1548.

How this power was exercised, Bishop Gibson ("Codex Ecclesiastici," vol. ii. 699) informs us:—"The "parson of a parish in Bristol libelled an innkeeper, in "the spiritual court, to pay tithes of the profit of his "kitchen, stable, and wine-cellar, alleging that he "made great profit in selling his beer, having bought "it for £500, and sold it for £1,000."—"So late as the "time of the 14th James I., the common law courts "were called upon to stay proceedings in the spiritual "court, against a parson who claimed *servants' wages*. "The court held that the *servants* of the plough, as "well as the *cattle* of the plough, should be exempt "from tithes."

The historian of any age, and of any people, will search in vain for an instance of religious cupidity equally offensive. Well might Sir Michael Foster, one of the judges of the King's Bench, in 1736, declare, in his "Scheme of Church Power," that "this law was "the most grievous tax upon industry the lust of power "ever suggested."

"*Artificers strangers*" were obliged to become partial conformists. The 21st Henry VIII., cap. 16,

A.D. 1524.

CHAP. III. Sect. 7.

Professions and trades.

required "artificers strangers," who had set up their trades in St. Martin's le Grand, which was both "peculiar, and a place of sanctuary, to yield themselves to "such direction and order as shall be taken by Cuthbert, bishop of London." Without such order they were prohibited "assembling in any company, congregation, or conventicle."

*Schoolmasters* could not teach in any public school, or private house, unless licensed so to do by the bishop. And to this day, in the list of fees charged by the registrars of consistory courts, are the sums charged for their licence.

*Midwives*, also, could not act without a licence from the bishop's court. Before it is granted they must take an oath, consisting of fifteen parts, one of which is, that no "child shall go unbaptised in the parish, by the "ordinary minister, according to the Book of Common "Prayer."

## SECTION VIII.—JUDICIAL POWERS IN SECULAR THINGS.

Priests, at a very early period, acted as judges. It is recorded, that at "a council, celebrated at York for "reforming the manners of the church, by Hubert, "archbishop of Canterbury, in the seventh year of "King Edward I., the said legate came to York on "the Lord's day, and was received by the clergy in "solemn procession. On the Monday he caused "assizes *de novell disseisin* and *de mort d'ancestre* "(actions as to real property), and of all the pleas

Canon, A.D. 1195.

Judicial powers in secular things.

"of the crown, to be holden by his officers; but he "and his officials held pleas of Christianity," *i.e.*, the court christian, as the ecclesiastical courts were then called.

That the archbishop should have exercised this power was contrary to a canon which was not then so ancient as to have been forgotten. "We deprive priests of "their office and benefice who do public business for "secular men." A.D. 1138.

This exercise of judicial authority, in matters purely civil, is a violation of other canons. The practice has been emphatically condemned by statute, and is opposed to the well-being of social life. Here is a canon, passed "at an English council, celebrated by "the Lord Othobon, cardinal legate of the apostolical "see of the kingdom of England, in the cathedral "church of St. Paul, London, 9th May, 1268." It says, "Whereas it specially concerns the honour of "the church, that carnal secular business be not "administered by hands dedicated to heavenly minis- "tries; and we think it sordid for clergymen to gape "after temporal jurisdiction, and receive it from "laymen; we therefore, for the extirpating of this "horrid vice, strictly forbid all priests whatsoever to "accept of a secular jurisdiction from a secular person; "with a saving to the king's prerogative in these "points." Cunning legate! Thy "saving" opened the very door thou didst feign to lock. "The king's "prerogative!" This covered the whole question, and rendered the interdict a legal farce.

Canon, A.D. 1268.

CHAP. III. Sect. 8.

Judicial powers in secular things.

So much for a canon. Now for a statute, passed 172 years afterwards. It says, "Whereas, bishops, and "other persons in holy orders, ought not to be entan- "gled with secular jurisdiction (the office of the "ministry being of such great importance that it will "take up the whole man), and for that it is *found, by "long experience, that this intermeddling with secular "jurisdictions hath occasioned great mischief and scandal "both to church and state;* his Majesty, out of his "religious care of the church and souls of his people, "is graciously pleased that it be enacted, and by the "authority of this present parliament be it enacted, "that no archbishop, or bishop, or other person that "now is, or hereafter shall be, in holy orders, shall at "any time after the 15th February, 1641, have any "seat or place, suffrage or voice, or use or execute any "power or authority in the parliament of this realm; "nor shall be of the privy council of his Majesty, his "heirs or successors; or justices of the peace, or oyer "and terminer, or gaol delivery; or execute any tem- "poral authority by virtue of any commission; but "shall be wholly disabled, and be uncapable to have, "receive, or execute any of the said offices, places, "powers, authorities, and things aforesaid." Every thing "done contrary to the true meaning of this act" was declared "void." This was the 16th Charles I., cap. 27. Under the plea of taking away the secular power of the church, episcopacy was altogether upset; but the 13th Charles II., cap. 2, repealed the foregoing act.

Statutes, A.D. 1640.

A.D. 1661.

Judicial powers in secular things.

There are two civil matters of prime importance to every person in the state, in which the secular jurisdiction exercised by persons in "holy orders" proves highly injurious. These are, marriage and testamentary affairs. Let us look at each.

Marriage.

MARRIAGE.—This is one of the *natural* rights of mankind. It falls within the class of privileges pertaining to humanity; and is, therefore, no more *per se* under spiritual jurisdiction, than is the right to breathe, to walk, to eat, or to sleep.*

At common law, marriage has always been regarded a civil contract. The Roman law speaks of the "nuptialia instrumenta;" *i.e.*, marriage contracts or deeds. These constituted the bond of marriage. The form of solemnisation does not constitute the obligation of the contract, any more than any given attitude, or particular emotion at the time of entering into any other contract, forms a part of, or is an essential appliance to, the validity of the deed by which that contract was made.

That marriage is exclusively a civil right is admitted by the ecclesiastical commissioners appointed to inquire into the practice of ecclesiastical courts. In their Report they say, "questions relating to this subject are "purely as to the civil right between individuals in their "lay character, and are neither spiritual nor affecting "the church establishment."† This Report was signed

* To the same effect is the declaration contained in the Justinian Institutions (lib. i. tit. 1), "Jus naturale est, quàm nos matrimonium appellamus."

† Report, 1830, page 12.

CHAP. III. Sect. 8.

Judicial powers in secular things.

by the then archbishop of Canterbury, the bishop of London, and distinguished lawyers belonging to the ecclesiastical and common law courts.

A sacrament.

How, then, did ecclesiastics manage to exercise matrimonial jurisdiction? Principally, by raising marriage into a sacrament. See how they played with the ignorant credulity of the eighth century. Here is one

Canons, A.D. 740.

of their canons—"Let the bridegroom and bride be "offered by their parents and bridefolk to receive the "priest's benediction; and let them remain virgins that "night, in honour to that benediction when they have "received it."

A.D. 1281.

The thirteenth century witnessed the same mental and moral prostration. Marriage was now by *law* pronounced a sacrament. "There are seven sacraments," said the church, "five of which every Christian "ought to receive; viz., baptism, confirmation, penance, "the eucharist, and extreme unction. There are two "other sacraments: orders, and matrimony. The first "is proper for the perfect; the other, in the times of "the New Testament, to the imperfect only; and yet "we believe it confers grace by its sacramental virtue."

Solemnisation of marriage.

As a sacrament, marriage could be solemnised only by priestly hands; and in a sacred place. An earlier

Canon, A.D. 1200.

canon provided that "none be joined in marriage but "publicly in the face of the church, except by the "special authority of the bishop."

Statute, A.D. 1548.

Custom and canon law were for ages one upon this point, and statute law agreed with both. The 2nd and 3rd Edward VI., cap. 21, sec. 3, contrived to deprive

persons of the liberty to marry, "unless asked in "church; and the ceremony appointed and set forth in "the Book of Common Prayer performed." But by the 6th and 7th William IV., cap. 85, sec. 18—21, Protestant dissenters may be married in their own places of worship, if registered for that purpose; or at the registrar's office; and adopt any ceremony they may prefer.

Degrees.

Another matter remains to be considered. It is the degrees of marriage. As a question of physical science, it is undoubtedly most important that persons should not intermarry within certain degrees of consanguinity. But the church has never placed the question, where alone it ought to have been put, viz., upon physical science, but upon theological dogmata. We find, therefore, that it interdicted persons from intermarrying who bore certain spiritual relations to each other. It first decreed:—

Canon, A.D. 950.

"That no man take a wife that is related to him "within the fourth degree; and if any one do it, let him "want God's mercy, except he desist and make satis- "faction as the bishop directs. If he die in his unrigh- "teous marriage, let him forfeit holy sepulture and "God's mercy."

Having laid hold of these weapons, "holy sepulture "and God's mercy," usually wielded in those days of revolting superstition, and with which cunning priests knew they could easily and effectually frighten the ignorant and credulous, they advanced a step farther; and again declared,

A.D. 1009 & 1017.

"Never let it be that a Christian marry within the

CHAP. III. Sect. 8.

Judicial powers in secular things.

"fourth degree, that is, within the fourth generation; "*nor to his spiritual relations.*" Who were these? "His godmother's or godfather's daughter, or the "daughter of the priest or person who baptised him."

The phrase "spiritual relations," by the canon last mentioned in the margin, is explained—"his sureties "at baptism."

The effects of these impiously absurd rules were frightful in the extreme. Some men would not know who was "the priest, or who the person," that had baptised him. Should it turn out that he had married the daughter of his godfather, his marriage was canonically void. Nay more. Had it happened that, in case of necessity, a parent had availed himself or herself of one of the few privileges then allowed by the church, and have baptised his or her own child, they were, by this act, brought under a *spiritual* relation; and by this means, the *natural* relation was broken. In other words, the parent who baptised his child, dissolved his or her own marriage;—and that though he had baptised his child from no other motive than if it had died without baptism, it would have died without salvation. Does the reader hesitate (as well he may) to believe all this? Here is proof of the fact:—

A.D. 1200. "If a layman baptise a child in case of necessity "(and even a father or mother may do it *without* "*impeachment of matrimony*), let all that follows after "the immersion be performed by the priest."*

"Without impeachment of matrimony,"—the church

* Johnson's Ecclesiastical Laws.

had been compelled to relax its law; the recorded relaxation is evidence of the pre-existent enormity. This canon repeated a former provision, which interdicted marriage "between a godson and the daughter "of the baptiser; or of the godfather, whether born "before or after."

Statute. A.D. 1533.

The question of degrees has been settled by statute. The 25th Henry VIII., cap. 22, sec. 3, declares "God's "law,"—*i.e.* the Mosaic institution of marriage,—"to "prohibit

Degrees.

"The son, to marry the mother or step-mother;

"The brother, the sister;

"The father, his son's daughter; or his daughter's "daughter;

"The son, the daughter of his father, born by his "step-mother;

"The son, the aunt; being his father's or mother's sister;

"The man, his wife's daughter, or his son's wife's "daughter, or his wife's daughter's daughter; or his "*wife's sister*."

This latter prohibition had invariably obtained by the canon law. Gregory had so instructed Augustine; and so had the church repeatedly, for ages, decreed. The state now adopted the same rule, and it did so for one express purpose:—to dissolve the marriage between Henry and Lady Katherine; as she was "before the "lawful wife of Prince Arthur, the elder brother to "the king." (Sec. 2, of the above act.)

Innumerable have been the evils arising from prohibiting a man marrying the sister of his deceased

CHAP. III. Sect. 8.

Judicial powers in secular things.

wife. In spite of the statute and of the canon, men in almost every rank of life have done so; and to do so they have a moral right. "God's law" interdicts it not. Common sense discountenances it not. Christian ethics disapprove it not. Yet, so long as it obtains legal authority, the men who transgress run many hazards. Children cannot inherit; the wife could not, under such circumstances, claim support, or dower, or administer to the effects of her intestate husband; nor is she, in the eye of the law, anything else than a concubine, whatever may be her many virtues. Nay more; both the man and his wife are punishable, in the ecclesiastical court, for breach of canonical law, as fornicators.

The whole of the laws relating to marriage require careful revision. Among many other disadvantages entailed upon families, the following may be stated as some of the evils which constantly arise from the existing state of things.

As to the *degrees* of marriage—the law has provided two different tribunals. Marriages *within* the Levitical degrees, are, as to their validity, tried in the ecclesiastical courts, and determined by canon, as well as by statute law. Marriages *without* those degrees, by the 5th and 6th William IV., cap. 54, are left to be tried by the courts of common law.

As to the *effect* of marriage.—In Scotland, children born *before* marriage become legitimated by the subsequent marriage of the same persons. This accords with the canon law, and also with the Roman law. "If any "person, without intending marriage, shall have children

" by a woman, and afterwards, by the dictates of affec-
" tion, shall marry that woman, and have other children
" by her, these latter children, and also the former, who
" gave occasion to the legitimacy of those born afterwards,
" shall be also legitimate."—(Lib. iii., tit. 1, sec. 2, "Justinian Institutions.") In 1235, the church tried to obtain the sanction of the English parliament to a similar law for England; " but all the earls and barons, with one voice, " replied, they would not change the English laws " which hitherto have been used and approved."—20th Henry III., cap. 9.

The consequence is, *Scotch* estates pass to such heirs as may be born before the marriage of their parents (they being subsequently married); but the *English* estate, or title, would not pass to such heirs. In Scotland, the same person is deemed legitimate; and in England regarded a bastard.

As to the *different laws* of marriage.—By a long established axiom of common and international law, the act which is good in the place where it is performed, is good in all other places. The *lex loci* applies to marriages celebrated abroad. But then, to prove this *lex loci*, you must prove, also, the law of the place in respect of domicile. Those laws are, in many instances, arbitrary, uncertain, and vague. Yet they must be determined, before the validity of the marriage can be settled, and, consequently, before succession to property can be decided. Scotland has its own laws of domicile; America its laws; Rome, and other continental states, their several and conflicting rules. They

CHAP. III. Sect. 8.

swell the difficulties to a most painful, and in some instances, ruinous extent.

Judicial powers in secular things.

Now that men intermix with each other, irrespective of national limits, it seems highly desirable to simplify the laws by which that intercommunity, so essential to the good of the human race, may be advantageously sustained. Englishmen would then know the law with which they must comply.

Pre-contracts of marriage.

Canon, A.D. 946.

"The intermeddling" of ecclesiastics with secular authority, has not been restricted to the creation of evils connected with the degrees of marriage. There were, for very many centuries, other mischiefs, springing from another department of the matrimonial canon law. At a very early period the church prescribed "forms of "espousals, and of laymen's betrothing." From this and other canons arose the custom of pre-contracts of marriage. These were called "spousals," and were of two kinds; *de futuro*, or a pledge, from each of the parties, to marry at some future time; and *de verba præsenti*, or a contract of present marriage. Though not either of them were solemnised, they were, as contracts, held binding. The rule of common law here prevailed over canon law. The evils arising from the custom are thus described.

Statute, A.D. 1541.

The 32nd Henry VIII., cap. 38, charges it upon "the usurped power of the bishop of Rome," that it hath "always entangled and troubled the jurisdiction and "regal power of this realm, by making that unlawful "which, by God's Word, is lawful, both in marriages "and other things," so that "many persons, after long

Judicial powers in secular things.

"continuance in matrimony solemnised," and children born, "have, nevertheless, by an unjust law of the "bishop of Rome, been divorced, by proof of a pre-"contract" of marriage. Another act (2nd and 3rd Edward VI., c. 23) says, "Under colour and pretence "of a contract made with another, which was very slen-"derly proved, and often surmised by the malice of the "party who desired to be dissolved from the marriage "which they liked not, they being so set upon pleasure "that, from the lightness of their nature, they over-"turned all they had done, so that, even from the very "church door and marriage feast, the man would "take another spouse, and the espouse take another "husband."—The ecclesiastical judge was, however, to try the question of pre-contract by *ecclesiastical* laws; but after the 26th George II., cap. 33, no suit could be brought in ecclesiastical courts to compel the celebration of any marriage *in facie ecclesiæ*, by reason of any contract of matrimony, whether *per verba de præsenti*, or *per verba de futuro*. Thus one evil was removed. Another mischief, however, still remains. It is marriage licences.

Statute, A.D. 1549.

Statute, A.D. 1753.

Marriage licences.

There have been few invasions upon natural and social rights more odious than those which the church of Rome invented upon this subject. But, glaring as is one invasion, it remains to this day. The 28th Henry VIII., cap. 16, enumerates the many usurpations "by "which the bishop of Rome, of his covetous and ambi-"tious mind, with the intent to enrich the see of Rome "did extort great sums of money from the people of "this realm." Among these usurpations, "licences"

Statute, A.D. 1536.

CHAP. III. Sect. 8.

Judicial powers in secular things.

are included. These, it is said, the people "*have timorously and ignorantly accepted and used.*" They belong to the same class as licences to eat flesh on a Friday! The latter have been abolished; why, then, do marriage licences remain? For no other reason than that which gave them birth; they are "timorously and "ignorantly accepted and used" by the people, and yield a rich revenue to those who grant them.

Second marriages.

SECOND MARRIAGES.—When any body of men are intent upon one object, they will prosecute their purpose with such fixity of action as eventually to carry their point. The church of Rome aimed at one grand purpose—celibacy. She commenced her crusade against morality and natural law, by prohibiting her priests "to marry a widow, or a second time." Second marriages were also interdicted among laymen. "Nor let "any priest be at a wedding where either the man or the "woman is married a second time, nor bless their con- "junction. Let such an one be so marked, as that it had "been better for him to have continued in chastity; "yet the layman may, by the apostle's permission, "marry a second time, if his wife fail him. But the "canons forbid a blessing to it, and appoint a satisfaction "by such men."—See further on this subject, chap. iii., sec. 15, p. 77.

Canon, A.D. 957.

Divorces.

One of the many anomalies, introduced and perpetuated by the state having allowed two separate orders of judicature—the secular and the spiritual, is to be traced in the law of divorce. The spiritual court takes cognisance of causes of divorce for cruelty or

Judicial powers in secular things.

adultery; and in cases of guilt proved, separates the parties from bed and board. The bond of marriage, however, remains, and can be broken only by an act of parliament. The rich guilty parties are the only ones that can get relief—the poor, or middle ranks, go unredressed. But steps are in progress by which this acknowledged evil will eventually be done away. A royal commission, upon this matter, is prosecuting its inquiries, which, it is hoped, will be followed by such legislative enactments as shall place the whole question upon a more equitable principle; conduce to greater morality; and prevent the continuance of many personal, domestic, and national wrongs.

Wills and testaments.

Wills.—Another most important secular affair, into which the baneful power of ecclesiastics has been admitted, relates to wills and testamentary matters. There is not a shadow of the spiritual* in testing the

* "Testamentary matters have no real connexion with religion, and "derive little illustration from laws divine. Spiritual jurisdiction in the "distribution of estates is, however, expressly condemned (Luke xii. 14), "but, notwithstanding this, a false and heretical association between the "wills of the dead and clerical functions is of remote antiquity and general "prevalence.

"In the early ages of Christianity, the corruptions of the clergy were "corrected by the canons of general councils; but in later and darker "ages, the church became universally corrupt, the whole synodical "authority of the western church became concentrated in the ecclesiastical "monarch, the Roman pontiff; and he, when opposed by divine or positive laws, issued bulls and canons to suppress the one, and, under the "pretence of his law being a *jus ex divino mixtum*, to overrule the "other.

"The early and purer canon law expressly forbade spiritual interference "in testaments. The fourth council of Carthage, consisting of two "hundred and fourteen bishops, and held in the year 398, ordained,

CHAP. III. Sect. 8.

Judicial powers in secular things.

validity of a will. It is a deed, and ought to be placed under the same legal regulations as affect all other deeds. So, indeed, the common law regards any will that disposes of *real estate.* Such a will is complete in itself: without probate, it is a sufficient title; should it, however, dispose of *personal* property, the sanction of the bishop is required. But why? If, in the nature of things, it be fitting any one should not obtain his father's watch until an ecclesiastic has granted probate, why is it not equally fitting that he should not inherit the estate, which the very same instrument placed at his disposal? Why for *this* as well as the other bequest does not the same learned functionary, in due form, pronounce it *probatus est?* The anomaly may have arisen from the fact, that at the time the church first exercised testamentary jurisdiction, men could not, by will, dispose of their *land.* There has been time enough, however, since the 31st of Henry VIII., cap. 1, sec. 1 (by which *land,* as well as goods, may be devised), to clear the common law of the many scandals daily heaped upon it from this one cause; as also to

"'Ut episcopus tuitionem testamentorum non suscipiet,' which appears "to be the earliest allusion to ecclesiastical interference in wills. This "canon is inserted in the monk Gratian's collection, authorised by Pope "Eugenius III., about 1150.

"No subsequent canon, decretal, or bull, can be found, which gave to "the church any jurisdiction of probates or testaments." * * *

"It is apprehended that there are several, out of the many decretals "and bulls addressed to the English clergy, which *recognise* their testa- "mentary jurisdiction; but a legal *source* for ecclesiastical jurisdiction "over probates is not to be traced in either civil or canon law."—*Fourth Report of Commissioners on Real Property, Appendix,* page 9.

Judicial powers in secular things.

prevent the still greater number of judicial wrongs constantly inflicted, by the same means, upon every class. The recital of all these wrongs would present a most painful list of evils.* How, it may be asked, has this monstrous injustice crept into its present rampant power? Just in the same way as the evils induced by the marriage laws. Ecclesiastics originally made every man's will, or were present when he made it.

Canons, A.D. 734.

The first historic record we have of the interference of "the religious" (as the priesthood were called), in testamentary matters, is found in the canons of this period. The question was asked, "whether a priest "or a deacon may be witnesses of the last words of "dying men concerning their estates?" The reply is —"Let him take with him the two or three, by whose "testimony every word may be established, lest the "kindred of the deceased, out of covetousness, con-"tradict what is said by the ecclesiastics."

In that rude age men could very rarely read or write; wills were, therefore, very often nuncupative, or by word of mouth: they were deferred being made till the last moment. At the side of the dying man stood the priest, in one hand offering extreme unction; by the other, he held the gate of heaven midway open; into the ear of the dying man the ecclesiastic whispered those all-ominous words, "the portion of the church." No wonder that that portion should be so great. So long as men believed that "masses for the dead" were

* The reader will find illustrations in the "History and Power of Ecclesiastical Courts," by the author.

CHAP. III. Sect. 8.

Judicial powers in secular things.

of any service, so long would "kings, earls, barons, and "other nobles," leave a portion of their goods to the church. It was a cheap and easy way of securing an escape from purgatory, and a place in paradise.

Five years after the church had interdicted physicians administering medicine, until the priest had given spiritual cure (chap. iii., page 41), it stretched its power still further by declaring a provincial constitution, in which it is said, "We charge that laymen "be often forbid *to make their wills without the presence* "*of a parish priest;* as they desire that their wills be "fulfilled. We also forbid priests to make their wills "by a lay hand."

Canons, A.D. 1236.

The bold Boniface openly declared, what had previously been managed in secret. "Because, when "laymen die intestate, the lords of the fee do not "permit their moveables to be distributed piously, for "the benefit of the deceased, according to the disposi- "tion of the ordinaries:—Let them be restrained; at "least as to that portion which it concerns the deceased "to have distributed for pious uses, freely by the "ordinaries of the places; and we ordain that the "church have her right out of the estate of the "deceased."

A.D. 1261.

Two facts become evident from this canon. The bishop distributed the effects of intestates; and, next, the church shared in the estate of the deceased. She asserted "her right." The amount depended upon custom. Lynwood says, it sometimes was the whole personal estate, when there were neither wife, children,

Judicial powers in secular things.

nor parents; at other times, it was half, when there was only a wife surviving; sometimes a third, when there were wife and children.

The bishop was sole distributor of intestates' estates. This was a right conceded by statute law. The 13th Edw. I., (Westminster, cap. 19), declares "the goods "of a person dying intestate come to the ordinary to be "disposed of." The bishop was bound by this law to answer the debts of the deceased, as were executors. Previously, bishops took their portion "for the soul of "the dead," even if it left creditors unpaid.

Statute, A.D. 1285.

This portion for the soul was a prolific source of wealth to the church. So fully had the national mind become impregnated with the monstrous error, that departed souls were in the priests' hands, that the state, by law, sanctioned the delusion. It even laid hold of the humane sympathies ordinarily felt towards the mentally afflicted, and provided that "the residue of the "lands and tenements of a lunatic should be distributed "for his soul by the advice of the ordinary," 17th Edw. II., cap. 10. This premium to a system of pious fraud was by an adroit priesthood turned to their own aggrandisement, at the expense of every one else. "Ordinaries do aggrieve" others "by difficulties of "their own making, in order to extort money on "account of the insinuation of wills, or the administra-"tion of goods." Henceforth, no fee shall be demanded for "insinuation of the testament of a poor man, whose "goods do not exceed 100 shillings." This standard is in present force. £5 constitutes *bona notabilia*.

Statute, A.D. 1324.

Canon, A.D. 1328.

CHAP. III. Sect. 8.

Judicial powers in secular things.

The next step taken by the church, was an addition to the power of making, or being present at the making of every man's will;—viz., the right of proving it also. In the constitutions of Stratford, the church com-

Canon, A.D. 1343.

plained—"Obstructions are thrown in the way of the "free making and execution of testaments, against the "laws and customs of the church hitherto practised, "the offence of the Divine Majesty, and the evident "injury of ecclesiastical right."

This canon, for the first time, claimed the right of probation of testaments, "unless some lay-fee chanced "to be devised in such testaments;" *i. e.*, if freehold estates were devised, the testament, so far as related to this devise, did not require probate. The bishop yielded to the baron. Of him, however, grievous complaint was made. "The great men and secular poten-"tates obstruct the prelates in their office of proving "testaments in places belonging to their lordships; "and do usurp to themselves a jurisdiction in these "points."

Secular duties ought, surely, to be performed by secular men. It is a manifest usurpation for spiritual persons to perform such civil functions. Would they tolerate secular men intermeddling with their spiritual duties? Why, then, should priests turn lawyers?

The frauds—the peculation—the injuries arising out of this state of things, eventually induced the state to

Statute, A.D. 1357.

interfere. By the 31st Edw. III., cap. 11, Westminster, "ordinaries were obliged to depute *the next of kin* "of the deceased intestate to administer his goods."

This act was the first recognition of the bishop's power to grant administration of intestates' estates. It contains this remarkable provision:—"Such deputies shall be "charged to administer, and dispend for the soul of the "dead," *i. e.*, pay the dead man's portion to the church. This act made three important alterations. Compulsion upon the bishop to grant administration—before it was at his option; restriction as to whom it was granted—to the next of kin, rather than to himself; and augmentation of power over the goods of the deceased, although it lessened the *personal* interest of the bishop in them. There was, however, one most remarkable omission. It made no alteration as to the actual distribution. This was left at the discretion of the bishop, who was guided by custom. Nor was it until the times of Charles II. (22nd and 23rd Chas. II., cap. 10), and 1st James II. (cap. 17), that the distribution of intestates' estates became fixed by statute law.

These acts, however, still left the distribution with the bishop. So that a person claiming a legacy, or a share in an intestate's property, must still apply to the bishop's court for an inventory of effects. That inventory he must carry to the court of chancery, which will compel the executor or administrator to execute the decree of the ecclesiastical judge. There are thus two systems of law, and two law-suits required for one and the same cause. This is one of the many daily evils which arise from keeping up two distinct branches of jurisprudence.

CHAP. III. Sect. 8.

Judicial powers in secular things.

The incipient reformation in the time of Edward VI. gave promise of removing this long-endured national evil. The 1st Edward VI., cap. 2, sec. 3, says—

Statute, A.D. 1547.

"Whereas the archbishops, bishops, and other "spiritual persons in this realm, do use process in their "own names and in such form as was used in the time "of the usurped power of the bishop of Rome, con- "trary to the form and process of the common law: "Be it enacted, that all causes of instance between "party and party, *probates of testaments, administrations "and inventory*, shall be made in the name and with "the style of the king, as in writs original or judicial "at the common law."

But though the ice was now broken, it was not melted. Popery and ecclesiastical processes were restored by Mary. This act of Edward was repealed by the 1st Mary, c. 2. (sess. 2nd), which in its turn was set aside by the 1st James, cap. 25, sec. 48. Had this been all, the act of Edward would have revived. But there had been an intervening statute (1st Philip and Mary, cap. 8, sec. 54), which placed "the ecclesiastical jurisdiction in the same "state for process of suits, and as large as the said "jurisdiction was in the 20th year of Henry VIII."

This intervening statute had been overlooked in the repealing statute of James. Had it been included, we should now have been wholly relieved from the anomalies and wrongs induced by this acknowledged remnant "of the usurped power of the bishop of "Rome." Never was the guilty supineness of a nation more clearly attested than in the profound apathy

nearly all ranks evince upon the subject of testamentary jurisdiction.

Judicial powers in secular things.

## SECTION IX.—TITHES.

There are three sorts of tithes: *predial*, or such as arise immediately from the ground — as hay, grain of all sorts, wood, fruits, and herbs; *mixed*, or things nourished by the ground, by means of goods depastured thereupon, or things nourished with the fruits thereof, as colts, calves, lambs, chickens, milk, cheese, eggs; and *personal*, or profits arising from labour and industry.

They are divided into great and small. Great tithes are corn, hay, and wood; small, are the predial tithes of other kinds, together with the mixed and personal.

Origin of tithes.

Tithes were all originally free offerings made at the altar or at collections; by charters, or deeds of gift. Offa (in 794), king of Mercia, made a law (it is said) by which he gave to the church the tithes of all his kingdom, which, the historian tells us, was done to expiate for the death of Ethelbert, king of the East Angles, whom, in the preceding year, he had caused basely to be murdered.*

Canons, A.D. 740.

Tithes are frequently mentioned in the early canons. We find it ordained, "that the priests themselves "receive the tithes from the people, and keep a written "account of the names of all that have paid them; "and divide them in the presence of such as fear God "according to canonical authority; and choose the first

Early division or appropriation.

* Burn (Tithes).

CHAP. III. Sect. 9. Tithes.

"part for the ornament of the church, and distribute "the second part to the use of the poor and strangers "with their own hands, with mercy and all humility; "and let the priests reserve the *third part to themselves*." And this continued to be the order of distribution for ages.

Enlargement of canon, A.D. 1064.

"The tenth sheaf is due to God of all corn, and "therefore to be paid; the tenth colt, calf, cheese, "lamb, fleece, butter, pig; the tenth of the profit of "bees, meadow, waters, mills, parks, warrens, fisheries, "osiers, gardens, and negotiations" or labour. The canon goes on to say, "that many detained these tithes "by instinct of the devil; and priests, being rich and "negligent, did not care to be at the pains to get them, "because they had sufficient maintenance; for there "are now three or four churches in many places where "then [in Augustine's time] there was but one; and "thus tithes began to be diminished."

Opposition to.

It appears that opposition has always, more or less, been raised against the payment and collection of tithes. In a canon of 1328, it is stated that they to whom they belonged, or their servants, were "hindered in their "ingress and egress to and from their farms from "which the tithes arise, in order to their collecting, "keeping, and carrying them away; and others "damaged the tithes, unless gloves or shoes were first "given or promised them." The greater excommunication was the penalty for these offences. The Statute Book contains evidence of the contentions induced from this source. The 27th Henry VIII., cap. 20,

states, that "divers numbers of evil-disposed persons, "having no respect to their duties to Almighty God, "had withheld, in some places, the whole, and in others, "the greater part, of their tithes, as well personal as "predial." The ecclesiastical laws were, therefore, to be enforced against them; and upon information being given by the officers of spiritual courts to the magistrates, they were to attach and imprison the offender until he "gave due obedience to the sentence of the "ecclesiastical court."

There is one remarkable clause in this act. It is sec. 4, and provides, that "it shall take effect, *only until* "*such time*" as a new code of ecclesiastical laws shall be provided; after which, tithes "shall be paid accord-"ing to such [new] laws, and none otherwise." This new code has not even yet appeared. But, instead of it, another act was, within six years, passed, by which "the ecclesiastical laws," as *then* existing, without the slightest reference to any alteration having been made, or even then contemplated, were still to be executed by ecclesiastical officers; who were again armed with authority to call upon any one or two justices of the peace to commit "the person refusing to pay," to prison, there to remain "until he performed the sentence of the "ecclesiastical court."—32nd Henry VIII., cap. 7, sec. 4.

But though this act put the promise given in the former one to sleep, it made a mighty alteration in the character of tithes. It had always been contended that they were "spiritual possessions;" and, as such, were

CHAP. III. Sect. 9. Tithes.

to be treated as sacred things. Had the assumption been well founded, a monstrous anomaly had been for ages perpetuated. *Lay* men, as well as ecclesiastics, had held tithes. The 32nd Henry VIII., cap. 7, sec. 1, states, that "divers lay persons had parsonages, "vicarages, and tithes, to them and their heirs; and that, "as such lay persons, they could neither at common "law, nor in any ecclesiastical court, sue for the wrongful "withholding of tithes." It then goes on, in sec. 7, to declare, "that in all cases, any person might have an "*estate of inheritance, freehold*, term-right or interest in "any parsonage, vicarage, portion, pension, *tithes*, obla- "tions, or other spiritual profit; which *now be*, or which "hereafter shall be, *made temporal*, or admitted to be in "*temporal hands and lay uses.*" These words changed the aspect of the whole question. Henceforth, tithes became real property; and any wrong done to the possessor, his heirs, wife, or others, was to be remedied in the king's temporal courts, according to writs original, although no such writs out of the court of chancery "have *heretofore* proceeded or been awarded."

The reader will recollect, also, that the 27th of Henry states, that tithes "*are due to God and holy church;*" in other words, are "spiritual things." But in the 32nd, (the last above referred to,) tithes and oblations are said to be "commonly due to the *owners, proprietors,* "*and possessors,*"—sec. 1. They are therefore now *civil* rights.

Statute, A.D. 1549.

Several things, that had been omitted in these two acts, were provided for by the 2nd and 3rd Edward

VI., cap. 13. Among the rest, *personal* tithes were re-enforced by "every person exercising merchandises, "bargaining, and selling clothing, handicraft, or other "art or faculty" being required "to pay, at Easter, the "tenth part of his clear gains," after deducting his expenses. But this could only be enforced "in such places "as within these forty years, (*i.e.*, before the act passed,) "had been accustomed to pay such personal tithes."

*Small tithes*, or those under forty shillings, were recoverable by the 7th and 8th Wm. III., cap. 6, before the magistrates. And by another act, cap. 34, of the same reign, if *Quakers* refused to pay tithes, or church rates, under £10, the justices of the peace, rather than the ecclesiastical courts, were to determine the matter. A.D. 1695.

By the 3rd and 4th Anne, cap. 18, (1704,) the 7th of William was made perpetual as to small tithes; and by the 53rd Geo. III., c. 127, sec. 4, the amount for which they can be summoned was raised from £10 to £50. This last act declares, that "no action shall be brought "for the not setting out tithes—nor any action brought "in any court of equity, or in any ecclesiastical court, "unless within six years from the time when they "became due." A.D. 1813.

A large portion of the church lands which belonged to the monastic institutions were discharged from paying tithes, especially such as had attached to them any parsonage; and the principle was, these parties could not pay tithes to themselves. The 31st Henry VIII., cap. 13, by which the greater monasteries were dissolved, exempted "all their lands, Tithe-free.

CHAP. III. Sect. 9. Tithes.

"when they came into the possession of the king, or "other persons, from the payment of tithes, in as "large and ample a manner as the abbots, priors, and "other ecclesiastical governors held and enjoyed" them,—sec. 21. The omission of this clause in other statutes dissolving the lesser monasteries (or those under £200 annually) renders their lands still subject to the payment of tithes.

Tithes in the city of London.

A variety of acts have passed as to the citizens of London paying tithes. After the great fire in 1666, the matter was settled by 22nd and 23rd Charles II., cap. 15, which fixed a certain amount of money to be paid in lieu of tithes, by an assessment in each parish, upon all houses, cellars, wharfs, &c. This assessment was to be made by the alderman and a number of parishioners of each ward; and was to be in the most equal way that the assessors could make; which assessment was to be finished before the 24th July, 1671. By this rule, the payments have continued to be made ever since.

Commutation of tithes.

A.D. 1836.

The many and grievous mischiefs which constantly sprung out of the system, at length induced the legislature to provide a remedy. The 6th and 7th Wm. IV., cap. 71, created a board of commissioners, who are clothed with certain powers, which have in a great measure superseded the legal vexations and wrongs to which nearly all parties were before exposed. The great principle of this remedial measure is, that it *fixes the yearly value* of tithes, by means of the average price of wheat, barley, and oats, during the preceding

seven years. This forms a rent-charge upon the land, and is paid instead of tithes. A variety of minor arrangements obtained the sanction of the legislature, by which such agreements may be made between respective parties, as will go far to prevent the necessity of angry and often ruinous law-suits, both ecclesiastical and civil. Another valuable measure was soon after passed, by which these rent-charges may be redeemed; the produce of which is to be applied by the commissioners to the governors of "Queen Anne's Bounty," 9th and 10th Vict., cap. 73.

## SECTION X.—USURY.

Very ancient canons denounce usury; or the taking interest for money. "We have forbidden usury; "because where there is gain, there is loss; gain in "the coffers, loss in the conscience." Canons, A.D. 785.

King Edward the Confessor also forbade usurers to dwell anywhere in his kingdom; and if any were convicted of exacting usury, he was deprived of his estate, and deemed an outlaw. A.D. 1064.

Edward III. (15th Edw. III., cap. 5), declared, "that the king and his heirs shall have the cognizance "of the usurers dead; and the ordinaries of the holy "church the cognizance of usurers in life, as to them "appertaineth to make composition by the censures "of holy church, for the sin; and to make restitution "of the usuries taken against the laws of holy church." Statute, A.D. 1341.

The 3rd Henry VII., cap. 5, "reserves to the A.D. 1487.

CHAP. III. Sect. 10. Usury.

"church" (the punishment of a fine of £100 notwithstanding) "the correction of their souls according to "the laws of the church."

A.D. 1623. The 21st James I., cap. 27, disallows the use of usury "in point of religion and conscience."

If the design of these laws was to secure honesty, we respect the intention; if it were to exert power, we cannot but despise the arrogance. The same thing applies to another department of the labours of the church.

### SECTION XI.—WEIGHTS AND MEASURES.

Canons, A.D. 925.

"It does of right concern the bishop not to permit "any fraud by unjust measure or weight; but the "weight and measure of every borough shall be rightly "adjusted according to what he says.

"And it is right that one measuring rod be not longer "than another, but all adjusted to the bishop's measure. "If there be any dispute, let the bishop decide it."

An implicit regard to historic truth demands, that before we close this analysis of the interference of ecclesiastics with secular immunities, a distinct reference should be made to the early and continuous efforts made by the church, in its corporate character, to improve the condition of the serfs.

### SECTION XII.—ENGLISH SLAVES.

Canons, A.D. 693.

An early canon imposed such penalties upon a man who bought a slave with the view of "sending him

English slaves.

" over sea," as amounted to a practical interdict of the custom.

" If a man give freedom to a slave at the altar, let " his family be free; let him take his liberty; have his " goods and protection for all that belong to him." A.D. 696.

" When any bishop passes out of the world, let every " Englishman of his, who has been made a slave in his " days, be set at liberty; and let every prelate " (succeeding) set at liberty three slaves, and give three " shillings to every one of them." A.D. 816.

Fines for certain offences " were to be paid in living " stock; but let none part with a man on that account." A.D. 877. But for this canon, slaves would have been sold as cattle.

We have this decree of the king:—" I, Ethelstan, " king, declare to all my reeves, with advice of arch- " bishops, bishops, and servants of God, that it is my " will, that ye set at liberty some one that has, for his " crimes, been condemned to slavery, for the mercies of " Christ." A.D. 925. And in the same law we have this noble principle avowed:—" The slave and the freeman are " equally dear to the Lord God, who bought them, " and bought them all with the same price."

## SECTION XIII.—TAXATION.

In no one thing was the distinct power of the church so marked, as in the right to tax itself. The state, for centuries, never imposed a tax upon ecclesiastical persons, until after they had themselves resolved so to do.

CHAP. III. Sect. 13.

Taxation.

In very early periods, Saxon monarchs exempted the church from any share of the public burdens. Thus we read—

Canons, A.D. 692.

"I, Wihtred, an earthly king, incited by the king of "heaven, have learned that no layman ought, of right, "to go to any church, or to demand any tribute from it; "therefore we decree, and in the name of Almighty "God and all the saints, we forbid all kings, our "successors, and all laymen, for ever, all dominion "over the churches, and all things belonging to them."

A.D. 696.

Again—"A freedom from taxes belongs to the "church; and let men pray for the king and honour "him of their own accord, without any compulsory "law."

A.D 943.

And again—"We charge and command that the holy "church of God, which is founded first in the blood "of Christ, and made a fair spouse by the multitude of "believers, be not invaded by the violence of wicked "men. And let it be allowed to none to lay taxes "upon the church of God; because the sons of the "church, that is, the sons of God, are free from all "earthly tribute in every kingdom. They who disdain "to obey the rules of the church's discipline, are more "bold than the soldiers who crucified Christ—for the "church hath power of binding and loosing."

During many centuries the church continued free from all taxation imposed by the state. She, however, was accustomed to tax herself in convocation, which, for a long time, was the only authority under which the tax could be levied on the clergy. The first inroad

made upon this privilege, was by the state condescending to *confirm* the taxes so levied. These acts continued to be passed, until the time of Charles II. The 29th and 30th of Charles, cap. 1, fixed a general poll-tax; "but by a private agreement between Sheldon, "archbishop of Canterbury, and Clarendon, the lord "chancellor, it was settled that the clergy should "silently waive the privilege of taxing their own body, "and submit to be included in the money bills prepared "by the commons. And this hath made convocations "unnecessary to the Crown and inconsiderable in themselves."—*Burn (Convocation.)*

## SECTION XIV.—BURIAL.

It is the obvious duty of the living to bury their dead. Among the Jews, "to be deprived of burial was "thought one of the greatest dishonours. It was denied "to none, not even to enemies; but it was withheld "from self-murderers till after sunset." *

At common law, every one is entitled to interment in the churchyard. It is a constitutional right, alike suggested by humanity and secured by immemorial prescription. By *ecclesiastical* law, the right to *Christian* burial has been taken away, for a variety of causes. They are as follow:—

"He that relinquisheth his wife, and taketh another "woman, breaketh wedlock. Let none of those rights

Canons, A.D. 963.

* Calmet, "Burial."

CHAP. III. Sect. 14. Burial.

"that belong to Christians be allowed him, either during "his life or at his death. Let the kindred that were "present at the contract suffer the same doom."

Canons, A.D. 925. "Let him that takes a false oath, when he dies, not "lie in a consecrated churchyard."

A.D. 950. "If any man do take a wife that is related to him "within the fourth degree, or any spiritual relation, let "him forfeit holy sepulture."

A.D. 960. "Let every man be expert at *paternoster et credo*, "if he desires to lie in holy ground."

A.D. 1138. "Let him be struck with anathema that kills a clerk, "or that imprisons or lays wicked hands on such. If "he die impenitent, let his body remain unburied."

A.D. 1343. "We, by the deliberate advice of this council, do "will, that all and singular within our province who "alienate their goods, or so great a share of them that "the churches (to the reparation whereof, as also of "the books and ornaments, they were obliged) are "deprived, be for the grievousness of their excess, them-"selves deprived of ecclesiastical sepulture."

A.D. 1378. "Let men be admonished to communicate at Easter, "Pentecost, and Christmas. Whoever does not receive "the sacrament of the eucharist at Easter (unless he "think he ought to abstain by the advice of the priest), "let him be forbidden entrance into the church while "he is alive, and deprived of Christian burial when "dead."

These laws supplied many painful exhibitions of religious intolerance. In 1305, the archbishop sent his mandate to dig up the body of an excommunicate that

had been buried in St. Michael's, Cornhill, and "to cast "it into any prophane place."

None of the above canons have been repealed. Henry the Eighth's parliament might well declare the canons "overmuch onerous," and "contrary to the "statutes and customs of this country." The Book of Common Prayer *now* in use, and of legal force, adds to the gloomy catalogue, by declaring that "persons un- "baptised, or that lay violent hands on themselves, or "that do not partake of the Lord's supper at Christmas "or Easter," shall not be buried with *Christian* rites. The remedy for the violation of the consciences of some of the clergy, if compelled to bury the unbaptised—as also relief for those who regard it as an intolerance, to have their children or friends denied Christian burial—is to follow the practice of the Scotch, and hold a solemn service in *the house*, prior to carrying the body to the grave.

## SECTION XV.—INFLICTION OF DEATH.

In the present day, the civil power only can deprive a subject of life. In ancient times, the church pronounced certain offences punishable with death. Thus, "If a far-comer, or stranger, go out of the road, and "neither scream nor blow a horn, he is to be con- "demned for a thief, either to be put to death or "ransomed." Canons, A.D. 696.

But the height of cruelty ever legalised was a law at first made by the church, and afterwards ratified by

CHAP. III. Sect. 15.

the English parliament, relative to a widower marrying a second time. By the 4th Edw. I., cap. 5, and the 18th Edw. III., stat. 3, cap. 2, "the man who married two "wives or one widow" was to be hanged. "Concerning "men twice married, called bigami, whom the bishop of "Rome, by a constitution made at the council of "Lyons, hath excluded from all clerks' privilege, "whereupon certain prelates (when such persons have "been attainted for felons) have prayed to have them "delivered as clerks, which were made bigami before "the same constitution; it is agreed and declared, "before the king and his council, that the same con-"stitution shall be understood in this wise—that "whether they were bigami *before* the same constitution, "or *after*, they shall not, from henceforth, be delivered "*to the prelates*, but *justice* shall be *executed* upon "them,* as upon other lay people." These statutes are not to be confounded with that of the 1st James, cap. 11, which made it felony for a man to marry a second time during the *life-time* of his wife. This was moral justice—the other laws were legal turpitude. The first referred to, not only constituted that an offence which in itself might be a virtue; but took a retrospective as well as a prospective operation. Happily, the whole have ceased to be law. The 9th Geo.

Infliction of death.

Statutes, A.D. 1276, and 1344.

Statute, A.D. 1828.

* And that justice *was* executed, appears from the constitution of Archbishop Winchelsey, in 1308, wherein is this complaint:—"Secular "judges stick not to hang clerks, although the cognizance of bigamy "ought to belong to the ecclesiastical court." Notable conflict! as to who should turn hangman—the bishop or the king?

Infliction of death.

IV., cap. 31, sec. 1, repealed those of Edw. I. and Edw. III.; as also the modification of both, by that of Edw. VI., cap. 12, sec. 16, which gave benefit of clergy to such bigamists. These monuments of papal domination, under the influence of a foreign canon law, sanctioned by the English legislature, were at first practically carried into effect, and afterwards permitted gradually to slumber. They have, at length, after an existence of five centuries and a half, received their final death-blow.

## SECTION XVI.—PURGATION.

One of the most dangerous powers possessed by the church, was that of requiring a person *suspected* of any crime to clear himself of the imputation, by his own oath of innocence, and the oaths of at least twelve of his neighbours, that they believed him upon his oath. These were called compurgators; six of whom were required in a charge of fornication, and twelve upon a charge of adultery. The evils of this system are thus stated in their own law:—"The officials of bishops, "archdeacons, and others, by a contrived malice, do "assign such places to clerks and laicks as offer to "purge themselves, as are in the remoter parts of their "jurisdiction, where victuals can hardly be purchased, "and an excessive number of compurgators, and so "make the innocent compound for money to avoid "fatigues and expences, insomuch that some choose to "confess and do penance for crimes which they never

Canons, A.D. 1195, and 1342.

CHAP. III. Sect. 16.

Purgation. Statute, A.D. 1640.

" committed." The statute is very strong in its condemnation of this iniquitous system of entrapping innocent, and augmenting the sin of guilty men. The star chamber of Henry VII. and Henry VIII., as also the high court of commission established by the 1st of Elizabeth, cap. 1, had each put an accused party upon his purgation, by the administration of the oath *ex officio*. Both courts were swept away by the 16th Charles I., caps. 10 and 11 ; and by the 13th Charles II., cap. 12, sec. 4, " the oath *ex officio*, or any oath, " whereby any person to whom the same is tendered or " administered, may be charged, or compelled to con- " fess, or accuse, or to purge him or herself of any " criminal matter or thing," is declared unlawful for " any archbishop, or other person exercising spiritual " or ecclesiastical jurisdiction, to tender or administer." This restriction of arbitrary power, Bishop Gibson (vol. ii. p. 1689) gravely laments, as having " restrained " and fettered the church in the exercise of her disci- " pline;" and which, he says, will be " matter of grief " to all good men, to all who are lovers of virtue and " religion, and have a concern for the honour of God!" Judge Foster, however, justified " the legislature in " disarming the church of this engine of canonical " oppression."—(See his " Examination of the Scheme " of Church Power," page 53.)

# CHAPTER IV.

## CHURCH LAWS IN RELATION TO THINGS SPIRITUAL.

§ 1. *Extirpation of Anglo-Saxon Heathenism*, by canon laws.

§ 2. *Legal establishment of Christianity* and its *incorporation with monarchy*, first by church authority, and afterwards by common law.

§ 3. *Church unity*—Fixed by a General Assembly, or Parliament.

Diversity of opinion and practice; interdicted, first by censures—by fines—by death.

Original opposers of church authority in England; Lollards, acts respecting them.

The Six Articles Act of Henry VIII.; originated from convocation; sanctioned by the state.

Acts of Mary, Elizabeth, and Edward VI.

§ 4. *Religious opinions*—penal statutes against.

Tabular Statement of all the laws, for 273 years, in respect of Nonconformists, Papists, and Episcopalians; with the penalties; and whether repealed or in force.

Summary as to the laws of toleration and religious opinions.

§ 5. *The priesthood*--

Order of.

Celibacy of.

Ordination of, by bishops and ministers.

Roman Catholic ordination declared valid by law; as also *Moravian episcopal* ordination.

Qualifications for ordination.

Assumed concurrence of the people in ordination, as stated in the Book of Common Prayer.

Conformity of priests—powers of the bishops, requiring conformity of opinions and rites.

Renunciation of orders.

Deprivation of orders.

CHAP. IV.

§ 6. *Religious ceremonies*—
Baptism essential to salvation.
Fasts—anointing—consecration of bread and wine, of churches.
Confession—confirmation.
Burial rites.

§ 7. *Uniformity*—
Diversity of liturgical forms of worship.
First Act of Uniformity.
Opposed by force at the time of worship.
Sacramental test as to corporations.
Toleration Act; or the surrender of a coerced unity of religious opinions and worship.

§ 8. *Exactions—offerings*, originally, the only payments.
Instance (from canon) of evasion.
*Compulsory payments*—when first made.

§ 9. *Discipline*—Legal process over the laity and priests.
Correction (causes of).
Excommunication.

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The essential element of piety is sympathy with the Divine government. Severed from this, creeds become impositions upon credulity; ceremonies converted into religious frauds; and conscience itself prostrated before despotism. The proof of sympathy lies in obedience to the great commands—"Thou shalt love the Lord thy God with all thy heart, and thy neighbour as thyself." The Divine expositor declared that upon these "hang all "the law and the prophets." In other words, they are the compendium of the revelation of all ages, and form the one unvarying and eternal rule of God's moral government.

The church of God has been entrusted with the enunciation of this rule; and only with its enunciation.

It is not, therefore, competent for any body of men, how numerous or how wise soever they may be, to assume an original jurisdiction in religion. They are servants, not sovereigns, in the "house of God;" and what is more, they are bound to observe the same conduct and to evince the same principles in their *collective*, as in their *individual* character.

This rule must, therefore, constitute the standard by which every professed *church*, as well as every professed *Christian*, is to be tried. Romanism, with its favourite assumption of oneness; Protestantism, with its admitted diversity, must stand or fall, just as this law shall be proved to have been obeyed or violated. Guided by its ever-attractive beauty, and all-commanding authority, we proceed to an analysis of those acts of legislation which the church has at different periods adopted, in respect of things spiritual.

## SECTION I.—EXTIRPATION OF ANGLO-SAXON HEATHENISM.

As might be expected, the church established by Augustine had for its primary object the extirpation of heathenism.

Ancient canons describe the paganism of our Anglo-Saxon progenitors to have consisted "in offerings to the "devil;" "in wearing garments like those of the Gen- "tiles;" "maiming horses, by slitting their nostrils, "fastening their ears together, making them deaf, "cutting off their tails, and eating their flesh;" "blood- "letting;" "divination, to drive away mischief, or to

A.D. 696, 740, &c.

CHAP. IV. Sect. 1.

Extirpation of Anglo-Saxon heathenism.

"make discovery of crimes committed;" "the worship "of fountains;" "soothsaying;" "false worship of "groves, elder, and many trees of divers sorts, and "stones."

Priests were enjoined to extirpate all these pagan rites; and if influence did not convince, punishment was to deter.

## SECTION II. — THE LEGAL ESTABLISHMENT OF CHRISTIANITY.

From a very early period it has been clad with pains and penalties. The following law was passed "in A.D. 747. "synod, at the beginning of September, near the place "called Cloves-hoos, these prelates of the churches of "Christ being present," [Cuthbert, archbishop of Canterbury; Dun, bishop of Rochester; three bishops of the Mercians; and several others,] "in the 32nd "year of the reign of Edibald, king of the Mercians, "who was then present with his princes and dukes." [This latter sentence in the record proves the incorporation of regal with priestly power, as both parties sat in the same council.] It proceeds, "When the "prelates of the sacred order, with many priests of "lesser dignities, met, to treat of and settle the unity of "the church, and *the state of Christianity*, it was decreed "that there be perfect agreement of all, in all the rites "of religion, in word, in work, and in judgment."

The church then contented herself with an "admo-"nition" from the Pontiff Zacharias, who, in his letter

then read, "in a loving manner entreated them, and "hinted, among other things, that a sentence of "anathema should certainly be published against them "that persisted in their pertinacious malice and con- "tempt" of his authority, by continuing to neglect the institutions of Rome.

During the following one hundred and thirty years, the church appears to have walked alone. No doubt she had to contend with a mass of national immorality, superstition, and disorder. Still, she employed moral force only; not that that moral force was then of any great worth; it was, however, all she had. At length, she beckoned over to her side the civil power. She is henceforth to be seen associated with men of war, of blood, and of death. It now became penal to reject Christianity. The first law upon this matter was passed in Alfred's time. It reads thus:—

"This is the ordinance that King Alfred made and A.D. 878. "published, when the English and Danes received each "other into perfect peace. In the first place, they "declared that they would love one God, and abandon "all heathenism in earnest. And they have enacted a "just secular law, because they knew that they could "not otherwise govern many, who would not submit "(as they should) to ecclesiastical discipline, and they "have decreed a secular discipline between Christ and "king in all cases, where men were unwilling to con- "form to ecclesiastical discipline, with a just regard to "the authority of the bishops, viz.:—

"1. That the peace of the church, within its walls,

CHAP. IV. Sect. 2.

"and the peace of the king's right hand be equally "inviolable.

Legal establishment of Christianity.

"2. And if any one do reject the Christian religion, "or shew his esteem for heathenism, let him pay his "weregild, or a mulct, or a fine, in proportion to the "fact." Weregild is a Saxon term, and signifies the price of the life of a man. Mulct, was an English penalty. Fine, was Danish. The three national parties were thus combined in enforcing a law, designed to make Christianity override the religious observances of Saxons and Danes; and to bring them, by means of one system of religion, into quiet submission to one supreme civil authority.

Canons, A.D. 950.

This was followed by another law, emanating from the Northumberland priests. They ordained that "We "should all honour and love one God, and diligently "observe one Christianity, and wholly abandon all "heathenism. If any man be discovered to practise "any heathenism for the future, or affect idolatry on "the account of witchcraft, if he be a king's thane [a "baron], let him pay nine marks [a mark was thirty "pence] and a half; half to Christ, and half to the "king. If he be a landed man of any other sort, let "him pay five marks and a half; half to Christ, and "half to the landlord. If he be a common man, let "him pay twelve ore," [a silver coin, valued at one shilling and eightpence]. Denial of the crime was triable by a jury of compeers. They go on to say, "Our will is, that there be *one Christianity and one* "*monarchy* in the nation for ever."

The force of this law will become more evident, if it be recollected, that Northumbria had not only been one of the seven Saxon kingdoms, which, in A.D. 800, became united under Egbert, but had most vigorously opposed all the papal attempts at domination. The Northumberland priesthood, however, at length gave way; and, one hundred and fifty years after the extinction of the Saxon heptarchy, united themselves in furtherance of what they called "one Christianity and one monarchy "for ever."

This adroit admixture of the two powers, by a sentence of pointed and expressive simplicity, has for more than nine hundred years been maintained. The principle thus clearly enunciated by the church has been uniformly recognised and acted upon by the state. It has incorporated the ecclesiastical aphorism into common law. Therefore it is that offences committed against Christianity are regarded as injuries done to society, and cognisable in the common law courts as those committed against the sovereign. The results of this admixture of the two powers may be traced in the details recorded in subsequent sections of this chapter. They commence with legal sanctions respecting church unity.

## SECTION III.—CHURCH UNITY.

The preceding laws related to external Christianity, and were designed to enforce unity of faith and practice. This cardinal and favourite dogma of the church of

CHAP. IV. Sect. 3. Church unity.

Rome has, by her own laws, been proved an absurd pretension. To recite all her puerile attempts would be unnecessarily to weary the reader with details with which he may already be familiar. It is, however, desirable, in order to exhibit the continuous efforts directed to this point, very briefly to state the principal penal laws first enacted by the church, and afterwards adopted by the state.

Half a century had elapsed since the canon passed respecting "one Christianity," as contradistinguished from "heathenism." This law had involved a principle that struck with fatal force against freedom of intellect, civil rights, and personal religion. The church was made to feel that the law was so regarded; for, rude and irreligious as men then were, they could, by one of the instincts inherent in all minds, distinguish between evidence and force. To meet the difficulty, and prepare the way for a more easy surrender to priestly rule, the ecclesiastical body changed its tactics, and instead of *seeming* to depend upon human authority, claimed an immediate Divine sanction.

Canons, A.D. 1009.

In a mixed assembly of senators and priests, it is stated that "all the great men of the English were "summoned to appear on the holy day of pentecost, "at a place called Eanham [in Oxfordshire], by the "peremptory edict of King Ethelred, at the instigation "of Ælfeah and Wulfstan, the archprelates; a multi- "tude of venerable worshippers of Christ being there- "fore assembled in that place, they *being divinely* "*inspired*, conferred together for recovering the exercise

"of the Catholic religion. In the first place is the "prime decree of the bishops, That we all turn from our "sins, as far as we can, and earnestly confess our "misdeeds and make satisfaction for them; and duly "love and honour the one God, and uniformly "maintain the one Christianity, and earnestly avoid all "heathenism, and advance devotion among ourselves, "and effect peace and unity."

Having thus set up a bold pretension to Divine inspiration, the church appears to have tried its effect for nearly the next four hundred years. At least, we find no trace of any penal laws during this period. But to avoid diversity of opinion was impossible; in other words, to prevent men looking into, or bringing to open light the corruptions of the then church, was found impracticable. Exasperated at the resistance men, even in those ages, raised against religious despotism and ecclesiastical deformity, the church applied to the state for additional civil penalties against all reformers. It had, at one time, been content with the infliction of fines. It now asked the state to grant it the use of more deadly weapons than it had been able to forge in its own arsenal, or to wield by its own arm. The canon gave place to the statute. The 5th Rich. II., cap. 5, therefore authorised "commissions to be directed "to the sheriffs, to *apprehend* such as be certified by "the prelates to be preachers of heresy, and to hold "them in strong prison until they will justify themselves "according to the law of holy church." It appears to have tried this new experiment for twenty years, and to

CHAP. IV. Sect. 3.

Church unity.

have failed, as both preceding or subsequent acts of religious coercion have done. Instead of recovering the downward progress it had taken, the church continued, with increased velocity, to run its dangerous course; and because it had to contend against giants, it buckled on all the armour it could grasp, the greater part of which was supplied at the cost, and employed to the disgrace of the state. The following statute illustrates this fact: It is the 2nd Henry IV., cap. 15, directed against the Lollards, as they were in derision called. It says—

Statute, A.D. 1400.

"Whereas, it is showed to our sovereign lord the "king, on behalf of the prelates and clergy of this "realm, that although the Catholic faith, builded "upon Christ, and by his apostles and the holy church, "hath been, amongst all the realms of the world, most "devoutly observed, and the church of England by "his noble progenitors and ancestors laudably endowed; "yet, nevertheless, divers false and perverse people, of "a certain new sect of the said faith, of the sacraments "of the church and the authority of the same damnably "thinking; and, against the laws of God and of the "church, usurping the office of preaching, do, per-"versely and maliciously, in divers places, under the "colour of dissembled holiness, preach and teach new "doctrines, contrary to the same faith and blessed "determinations of holy church, and of such sect and "wicked doctrines and opinions, they make unlawful "conventicles and confederacies; they hold and exercise "schools; they make and write books; they do

" wickedly instruct and inform people; and, as much " as they may, excite and stir them to sedition and " insurrection, and maketh great strife and division " among the people; and other enormities, horrible to " be heard, daily do perpetrate and commit, in subversion " of the said Catholic faith, and in diminution of the " estate, rights, and liberties of the said church of " England,"—[Eccl̄ia Anglicana.]—" And whereas the " diocesans of the said realm cannot by their juris- " diction spiritual, without aid of his majesty, suffi- " ciently correct the said false and perverse people, " nor refrain their malice, because the said people do go " from diocese to diocese, and will not appear before " the said diocesans, but the same and their jurisdiction " spiritual, and the keys of the church, with the censures " of the same, do utterly contemn and despise. Upon " which novelties, above rehearsed, the prelates and " clergy have sought that this wicked sect, preachings, " doctrines, and opinions, should from henceforth cease, " and be utterly destroyed; therefore, by the assent of " the states, [it hath been] ordained and granted that " none within this realm presume to preach, openly or " privily, without licence of the diocesans, nor teach, " hold, or instruct, openly or privily; nor make nor " write any book contrary to the Catholic faith or deter- " mination of the holy church; nor make any conven- " ticles; or in any wise hold or exercise schools." It goes on to say—" And if any persons be *before the* " *diocesans convicted according to the canonical decrees*, " the sheriff of the county, mayor of a city, or town,

CHAP. IV. Sect. 3. Church unity.

" or borough, after such sentence promulgate, shall " them receive; and them before the people in a high " place do to be burnt, that such punishment may " strike in fear to the minds of the others, whereby no " such wicked doctrine against the Catholic faith be " sustained or suffered. And the sheriffs, mayors, and " bailiffs shall be attending, aiding, and supporting, to " the said diocesans and their commissaries."

But, as though the church would not be behind the state in acts of cruel persecution, we have " the consti- " tutions of Arundel, archbishop of Canterbury, pub- " lished in a convocation of the whole clergy of his " province, celebrated at Oxford, A.D. 1408, Henry IV. " reigning in England, Gregory XII., Alexander V., " and Benedict XIII., exercising the papal jurisdiction " all at once." With three popes of Rome, each excommunicating one the other; with an English archbishop, maddened into rage, and a parliament prostrated before arrogant ecclesiastics, what was to be expected but the following fulmination?

Canons, A.D. 1408.

Canons, A.D. 1408.

" He does an injury to the most reverend synod who " examines its determinations; and since he who dis- " putes the supreme earthly judgment is liable to the " punishment of sacrilege, as the authority of civil law " teaches us, much more grievously are they to be " punished and cut off, as putrid members, from the " church militant, who violate, oppose, and despise, by " various doctrines, words and deeds, the laws and " canons made by the key keeper of eternal life and " death. We, therefore, for the strengthening of the

"canon law made on this behalf, add the just following "penalties:—

"1. We ordain, &c., that no one preach the word of "God without leave of the diocesan." Excommunication followed upon the first violation of this law, and "confiscation of goods and imprisonment until repent-"ance," upon a second transgression.*

"2. Preaching, teaching, and observing anything "contrary to the determinations of holy church." The same penalties. It goes on to say—

"3. Because a *new path* oftener misleads men than an "old, we ordain that no book or treatise, composed by "John Wickliff, be read in the schools, halls, or inns, "unless unanimously approved by the Universities of "Oxford or Cambridge."

4. The translation of the text of Holy Scripture was denounced "a dangerous thing, as blessed Hierome "testifies, because it is not easy to make the sense in "all respects the same, as he confesses. But he made "frequent mistakes in this business, *although he was* "*inspired*." The translation of the Scriptures by Wickliffe was forbidden "to be read, either in public "or private, in whole or in part, under pain of the "greater excommunication. Every transgressor was to be punished as a fomenter of heresy and error.

* It is a remarkable illustration of the then state of things, that although "the Word of God" was, by the church, prohibited being preached, yet that "ignorant priests" were, by this very canon, recognised as still abounding in the land. This canon, therefore, repeats and re-enforces the law of the church made in 1281, and which will be found in another part of this volume.

CHAP. IV. Sect. 3.

Church unity.

5. Disputation in schools was interdicted.

6. The University of Oxford was declared to be degenerated; and, through it, "our province is infected "with new unprofitable doctrines, and blemished with "the new damnable brand of Lollardy, to the great "scandal of the University itself, reaching to remote "foreign parts; therefore, lest, the fountain-head being "polluted, the stream be made impure even after "the cleaning of the river, we ordain every warden, "provost, and sexton of colleges, and the principal of "every inn or hall of the said University, to inquire "after all suspected persons, and to expel doctors, "masters, bachelors, or scholars."

And, to prove the animus of the whole, it was added, "That for the more easy punishment of offenders—in "case they could not be found—they were to be "proceeded against without *noise or form of judicature*, "and justice done upon the contumacious, *notwith-* "*standing their absence.*"

Such was the ecclesiastical fury of those times, that it sought to abrogate or set aside the law of 28th Edw. III., c. 3, which said, "No man shall be taken, put "out of land or tenement, imprisoned, disinherited, nor "put to death, without being brought in answer by due "process of law." Who would prefer ecclesiastical to monarchical authority?

Yet, in proportion to the failure, rose the intensity of persecution. Another statute was, therefore, added.

Statute, A.D. 1414

It is the 2nd Henry V., cap. 8, which required that not only the chancellor, judges, and magistrates, but

" all officers having governance of people, to be sworn, " at the time of their appointment, to assist the ordina- " ries in extirpating heretics," who were to forfeit their lives, " and all their fee simple lands, goods, and chattels." The canon had extended the confiscation to goods only. The statute included *lands* as well.

In spite of all these terrors men would think, speak, aye, and *act* for themselves. Again, therefore, within two years, the canon law poured forth its denunciations. By it a corps of spiritual police was established. The constitution of Archbishop Chichley required " every " bishop and archdeacon, by themselves, or by their " officials, diligently to inquire after persons *suspected* " of heresy; and cause three or more men, of good " report, in every deanery and parish in which heretics " are said to dwell, to swear that if they know any " heretics who keep private conventicles, or *differ in* " *their* life and *manners from the generality of the faith-* " *ful;* or who maintain heresies or errors, or have sus- " pected books, written in English; or that entertain " persons suspected of heresies or errors; or that favour " such to dwell or converse; or resort in or to such " places;—they will inform against, and discover in " writing those persons, with all such circumstances " upon which they are suspected, to the said bishops, " archdeacons, or their commissaries." " And let those " archdeacons, or their commissaries, *secretly transmit*, " under their seals, the names of the persons so informed " against, to the diocesan, who shall make lawful pro- " cess against them with effect." Persons " convicted,

Canon, A.D. 1416.

CHAP. IV. Sect. 3. Church unity.

" but not delivered to the secular court," (in order to be burnt, according to the 2nd statute of Henry IV.,) " were to be imprisoned *till the next convocation of the pre-* " *lates,*" who might then further prosecute the offender.

All these statutes and canons remained in force, with others subsequently added, until the time of Edward VI., when they were repealed; but they were revived under Mary.

The events that occurred within the century and nearly a quarter subsequent to the passing of these laws, present a revolting exhibition of folly and wickedness. Prelates and monarchs outvied each other in religious persecution. Whatever changes took place in the external administration of ecclesiastical affairs, and they were many and of great moment, there yet remained the old leaven of coerced unity. One standard only was allowed—that was, " the church;" one profession only was legalised, viz., implicit faith in that standard.

However anxious Henry VIII. might be to eject the Pope from the exercise of temporal power in this country, he was resolved that from the *spiritual* domination of Rome there should be no liberation. By the 25th Henry VIII., cap. 21, sec. 19, it is expressly declared, that the act should " not be expounded that your grace, " your nobles, and subjects intend to decline or vary " from the congregation of Christ's church in any things " concerning the very articles of the Catholic faith of " Christendom."

Statute A.D. 1534.

Six years after the above act had passed, another

law was made, which for cruelty of purpose, arrogance of impiety, and hardihood of religious rage, had never been equalled by any previous persecuting enactment. It is, in fact, the concentration of all the preceding blood-stained statutes and canons. The 31st Henry VIII., cap. 14, sec. 8 and 9, declares:—

Statute, A.D. 1540.

"If any person by word, writing, printing, ciphering, "or otherwise, do preach, teach, dispute, or *hold opinion*, "that in the blessed sacrament of the altar, in the form "of bread and wine (after the consecration thereof), "there is not present really the natural body and blood "of our Saviour Jesus Christ, conceived of the Virgin "Mary; or that after the consecration there remaineth "any substance of bread and wine, or any other sub- "stance but the substance of Christ, God and man; "or that in the flesh, under the form of bread, is not "the very blood of Christ; or that with the blood, "under the form of wine, is not the very flesh of Christ, "as well apart as though they were both together; or "affirm the said sacrament to be of other substance "than is aforesaid; or deprave the said blessed sacra- "ment;—he shall be adjudged an heretic, and suffer "death by burning; and shall forfeit to the king all "his lands, tenements, goods and chattels, as in high "treason." Thus, this act declared it to be the highest crime known in law (treason) not to believe a lie!

Milder penalties attached to persons "who taught or "affirmed the necessity of administering the sacrament "in both kinds; or that all persons (except priests) "should partake of both kinds; or that priests might

CHAP. IV. Sect. 3. Church unity.

"marry; or that monastic vows were not binding; "or that auricular confession was not to be prac- "tised;" for holding these opinions, the persons were declared felons. Bishops were to punish offenders, and so also were justices of the peace; lords of manors, in their courts leet, were to do the same. The owners of the soil were thus converted into tormentors of the soul.

This is called the Six Articles Act. For speaking against it, more than five hundred persons in the city of London alone were, in a few days, thrown into prison. Lambert disputed, in Westminster Hall, with Hen. VIII., personally; and was silenced by Henry handing him over to the flames.

It must be remembered that the state was not the only party responsible for this cruel enactment.* Both in convocation and parliament, Cranmer opposed the measure. "Before this act passed, marvellous great "struggling there was, on both parts, for and against "it."† The bill, however, was carried through both houses with great haste. On the 1st of June, it was

* The impious decree issued first from the convocation. The act is headed, "An act for abolishing Diversity in Opinions." Its preamble states—"Forasmuch as in the synod and convocation, there were certain "articles set forth which the king, of his most excellent goodness, com- "manded should be deliberately and advisedly by his said archbishops, "bishops, and other learned men of his clergy, debated; whereupon, after "great and long deliberate and advised disputation and consultation had, "concerning the said articles, as well by the consent of the lords spiritual "and other learned men in their convocation, it is with the consent of the "commons, assented," &c.

† Strype's Memoirs of Cranmer, vol. i. p. 162.

brought into the House of Lords, and on the 10th passed. On the 14th of the same month it passed the Commons; and on the 28th, received the royal assent. An English Inquisition erected within twenty-eight days!

Nor was it enough to set up a blood-stained process, by which to compel men to believe more palpable absurdities than even a corrupt and besotted pagan priesthood had ever attempted to force upon any populace, however degraded it might be; Henry and his parliament stretched their powers a little further. There were other opinions disliked. These had not been included in the Six Articles Act; but they were inserted in an act passed the very next year. The 32nd Henry VIII., cap. 49, sec. 11, *excluded* from the general pardon "those persons who hold these heresies "and erroneous opinions: that is to say, that it is not "lawful for a Christian man to bear office or rule in "the commonwealth,—that Christ took no bodily sub- "stance of our blessed Lady,—that sinners, after baptism, "cannot be restored by repentance,—that every manner "of death, with the time and hour therof, is so certainly "prescribed, appointed, and determined to every man "of God, that neither any prince by his sword can "alter it, nor any man by his own wilfulness prevent "or change it."

Statute, A.D. 1540.

By virtue of this exclusion from the general pardon, by the above act, Ann Askew, a young gentlewoman of condition, was prosecuted for denying the corporal presence; and, with Nicholas Ottenden, a priest; John

CHAP. IV. Sect. 3. Church unity.

Lasells, a gentleman belonging to the Court; and John Adlam, a tailor; were all burned in Smithfield.—*Collier*, v. 161. But we must relieve the reader from this painful exhibition.

Edward VI. had no sooner ascended the throne, than the cruel acts of his father were swept away. The Statute, A.D. 1547. 1st Edward VI., cap. 12, offers a singular apology for all the cruelties previously inflicted in the name of outraged religion. It says, "Many of the laws, passed "in the previous reigns, were deemed very strait, sore, "extreme, and terrible; but as, in tempest or winter, "one garment is convenient; but, in calm or warm "weather, a lighter garment is used,—so we have seen "divers sore laws taken away." It therefore repealed many of the penal acts passed in the times of Richard II., Henry V., and Henry VIII., "concerning religion "or opinions."

During six years and six months, a gleam of light was cast over the moral darkness of that age; "but "the darkness comprehended it not." Afresh the clouds gathered around the throne of Mary. Her parliament repealed all the tolerant laws of Edward. A.D. 1554. The 1st and 2nd Philip and Mary, cap. 6, revived all the penal statutes of Richard II. and Henry VIII., against heresy and heretics. The fires of persecution again blazed. No less than two hundred and twenty-eight persons were burned for religious opinions, deemed erroneous and heretical, during the inglorious reign of that infuriated bigot. Her death put a stop to the persecution.

The first of Elizabeth not only repealed many of these blood-stained statutes of Mary, but removed the old standard of opinions. This was done by the 35th section of the 1st Elizabeth, cap. 1, which declared that " No manner of order, act, or determination, for any " matter of religion, had or made by the authority of *this* " *present* parliament," (it was still the parliament which had been summoned by Mary, and was not dissolved for several months after Elizabeth's accession,) " shall be " deemed at any time hereafter to be any error, heresie, " schism, or schismatical opinion."

Statute, A.D. 1558.

This clause was designed to put out the fires Mary had lighted up through the country, and but for which, they might have continued to blaze. The next clause (sec. 36) defined the standard by which heresy was then, and is now, determined. And a strange medley it is. All the old decisions are recognised, as well as the canonical Scriptures. Heresy was to be " only such as heretofore hath been determined to be " heresy by the authority of the canonical Scriptures; " or by the first four general councils, or any of them; " or by any other general council wherein the same " was declared heresy by the express and plain words " of the said canonical Scriptures; or such as *hereafter* " shall be ordered or determined to be heresy by the " high court of parliament, with the consent of the " clergy in their convocation."

Never in the history of the world has any attempt to secure a favourite object been more signally unsuccessful, than this endeavour to coerce into an external

CHAP. IV. Sect. 3.

religious oneness. We shall see, however, that the evil did not all at once cease.

## SECTION IV.—RELIGIOUS OPINIONS.

It is a remarkable fact, that from the time of Elizabeth until that of William III., there were more penal statutes made respecting *religious opinions*, than had, in any corresponding period of 130 years in English history, disfigured Christianity. Nearly fifty statutes created about 110 offences. "Though the statute (1st "Elizabeth, cap. 1) effected an emancipation from the "Roman yoke, it was not till long afterwards that the "nation learned the lesson of religious toleration. Our "law, in the meantime, proceeded not only to imitate "the persecutions of the popish times, but in some "respects to *surpass* them; for while it continued to "punish the offence of heresy, it began now to exercise "new rigours of its own with respect to that of non-"conformity.*

Up to the time of Elizabeth, the thunder of ecclesiastical artillery had been poured forth against *conduct*. Henceforth, it was levelled against *opinions*. Nay more—the statute law now, for the first time, punished *omissions*, as well as actions. Thus, the 1st Elizabeth, cap. 2, sec. 14, declares, "That all and every person "shall, unless they have lawful or reasonable excuse to "be absent, resort to their parish church every Sunday, "and other days ordained to be kept as holy days,

Statute, A.D. 1558.

* Stephens' Commentaries on the Laws of England, vol. iii. p. 46.

" then and there to abide during the time of common " prayer, preaching, and other service of God, upon pain " of punishment by the censures of the church, and " the forfeiture of twelve pence for every such offence."

Nonconformists were liable, therefore, to be cited before the judges of assize, and also before bishops in the ecclesiastical courts. The Toleration Act repealed the above clause, and thus took away the criminal offence of nonconformity.

Other omissions were speedily afterwards punished. The 5th Elizabeth, cap. 23, sec. 13, (and it is to this day an unrepealed provision,) declares, that for " re- " fusing to have his or their child baptised, or to receive " the holy communion," the offender is liable to imprisonment.

Statute, A.D. 1563.

Nor were the common people the only ones exposed to threatening for omissions of duty. In the act first recited, viz., the 1st of Elizabeth, there is a singular clause relative to archbishops and bishops. These, it is to be recollected, had absented themselves from attending parliament during the passing of the act. They were, however, required to put it into execution. In sec. 15, are these words:—

" The Queen's most excellent majesty, the *lords tem-* " *poral* and all the commons, do in God's name " earnestly require and charge all the archbishops and " bishops, that they endeavour, to the uttermost of " their knowledges, that the due and true execution " hereof may be made throughout their dioceses, as they " will answer before God for such evils and plagues

CHAP. IV. Sect. 4. Religious opinions.

"wherewith Almighty God may justly punish his "people for *neglecting* this good and wholesome law."

Was ever such refinement in folly? Archbishops and bishops were attempted to be frightened into compliance with a law that was inimical to their conscientious opinions, by "the Queen's majesty" threatening them with being "accessories *before* the fact" to certain plagues, that Heaven might peradventure inflict upon the nation! Of all the hobgoblins that a disordered imagination ever created, this legal scarecrow is the most laughable. But the history of religious legislation will be best learned by the following tabular statement of the *principal* laws passed since the Reformation.

*Statutes passed against Nonconformists, Papists and Episcopalians, from the time of Edward VI.* (A.D. 1547), *until the time of Geo. III.* (A.D. 1820), *being* 273 *years.*

| Statutes. | Offences. | Penalties. | Repealed or in Force. |
|---|---|---|---|
| 2 Edw. VI. cap. 1. | Parsons, Vicars, or other Ministers, speaking against the Book of Common Prayer, or Sacraments, or using any other form or rite, other than as set forth in the same. | First offence, forfeit so much of his promotion as the King might fix, and six months' imprisonment. Second offence, twelve months and deprived of all spiritual promotion. | In force. |
| | *Any person whatsoever speaking against Prayer Book, or any part thereof.* Ministering any Sacrament other than as therein prescribed, or *interrupting any Minister in the administration thereof.* | Forfeit £10 for the first offence; £20 for the second; and for the third, forfeit all his goods and chattels, and suffer imprisonment for life. | The words in italics are still in force; the middle clause repealed as to Protestant Dissenters by Toleration Act. |

| Statutes. | Offences. | Penalties. | Repealed or in Force. |
|---|---|---|---|
| 5 & 6 Edw. VI., cap. 1. | Not attending Church every Sunday, or Holy Days, and remaining during service. | Censure of the Church. | Repealed by 7 & 8 Vict. c. 102; and 9 & 10 Vict., c. 59. |
| | Being present at any other form of Prayer, Sacraments, or *making Ministers.* | First offence, six months' imprisonment. Second offence, 12 months; and for the third, imprisonment for life. | Repealed as to Roman Catholics, 7 & 8 Vict., c. 102 (1844); and 9 & 10 Vict., c. 59, but which do not affect Protestant Dissenters as to the making of Ministers. |
| 1 Eliz. * cap. 2. sec. 14, & c. 1. | Depraving Common Prayer Book. | 100 marks, or six months' imprisonment. Third offence, imprisonment for life. | In force. |
| | Not repairing to Church. | Fine of twelve-pence and Church censures. | Repealed by Toleration Act, A.D. 1688, as to Protestant Dissenters; and by 7 & 8 Vict. as to Roman Catholics. |
| 5 Eliz. cap. 1. | Maintaining the jurisdiction of the Bishop of Rome. | Premunire. | Repealed as to Roman Catholics by 7 & 8 Vict., cap. 102. |
| | Refusing to take the Oath of Supremacy. | High treason. | |
| 5 Eliz. cap. 25. | Not having a child baptised. | Excommunication and imprisonment. | Not repealed as to Episcopalians. |
| 13 Eliz. cap. 2. | Obtaining or using bulls, absolution, &c., from the Bishop of Rome. | High treason. | Repealed by 9 & 10 Vict., c. 59; though still unlawful to import bulls from Rome |

* The Acts of Mary are stated at page 100.

| Statutes. | Offences. | Penalties. | Repealed or in Force. |
|---|---|---|---|
| 13 Eliz. cap. 2. | Maintainers or comforters of such offenders. | Premunire. | Repealed by 9 & 10 Vict., c. 59; though still unlawful to import bulls from Rome |
| | Concealers of ditto. | Misprision of treason. | |
| | Importers of crosses, pictures, offered or accepted for use. | Premunire. | |
| 23 Eliz. cap. 1. | Withdrawing from the religion established, to the Romish religion. | High treason. | Repealed as to Protestant Dissenters by 1 William and Mary, 1688; and as to Roman Catholics, 7 & 8 Vict., c. 102, in 1844. |
| | Aiders of ditto. | Misprision of treason. | |
| | Saying Mass. | 100 marks and one year's imprisonment | |
| | Hearing Mass. | Same punishment. | |
| | Absenting from Church. | £20 per month. | |
| | Keeping a Schoolmaster who absents himself from Church. | £10 a month, Schoolmaster disabled, and one year's imprisonment. | |
| 27 Eliz. cap. 2. | Jesuists coming into or remaining in the country. | High treason. | Repealed as to Roman Catholics by 7 & 8 Vict., c. 102. |
| | Aiders of such. | Felony. | |
| | Carrying relief to any such persons beyond sea. | Premunire. | |
| | Not discovering such persons, if a Justice, | Fined 200 marks. | |
| | Any other person, | Fined at the Queen's pleasure. | |
| 29 Eliz. cap. 6. | Recusant conveying his estate to prevent seizures. | Void. | |
| | Not repairing to Church. | Forfeiture of all goods and two-thirds of lands and leases. | |

| Statutes. | Offences. | Penalties. | Repealed or in Force. |
|---|---|---|---|
| 35 Eliz. cap. 1. | Any person, above sixteen years of age, frequenting Conventicles, or persuading others to do so. | Committed to prison till he conforms himself, and makes submission. | Repealed by Toleration Act, as to Protestant Dissenters; and by 7 & 8 Vict., c. 102, as to Roman Catholics. |
| | Nonconformists. | To depart the realm. [This was the first statute expressly made, after the Reformation, against Dissenters.] | |
| 35 Eliz. cap. 2. | Popish recusant going five miles beyond his dwelling. | Forfeits all his lands, goods, and annuities for life. | |
| | Being a copyholder. | Forfeits his copyhold to the Lord of the Manor. | |
| | A Jesuit or Priest suspected to be such, or refusing to answer. | Committed to prison till he answers directly. | |
| | Submission to be made some Sunday in Church. | If not so made, submission of no avail. [This appears to have been copied from the Romish canon as to recanting heresy. See page 22, chap. ii. of this work.] | |
| 1 James I. cap. 4. | Popish heir, continuing a Papist after he comes to sixteen years of age. | Lands not freed till he conforms, and takes the Oath of Supremacy. | Repealed as to Protestant Dissenters by Toleration Act; as to Roman Catholics, by 7 & 8 Vict., c. 102, and 9 & 10 Vict., c. 59. |
| | Sending a child to a Popish college. | Forfeit £100. | |
| | The person so sent. | Disabled to inherit, purchase, take, or enjoy land, legacies, &c., &c. | |
| | Keeping school, and the Schoolmaster. | Forfeit 40s. a day. | |

| Statutes. | Offences. | Penalties. | Repealed or in Force. |
|---|---|---|---|
| 3 James I. cap. 4. | Popish recusant convict that conforms, but does not once in every year receive the Sacrament. | First year, forfeit £20; second year, £40; and every default after, £60. | Repealed by 7 & 8 Vict. c. 102; and 9 & 10 Vict., c. 59. |
| | If, after he has received the Sacrament, he makes default a whole year. | Forfeits £60. | |
| | Absence from Church. | £20 a month. | |
| | Keeping servants or others in a house, who do not go to Church. | £10 per month. | |
| | To reconcile any subject to the See of Rome, or induce any to promise obedience thereto. | High treason. | |
| 3 James I. cap. 5. | Popish recusant coming to Court, without command of the King. | Forfeits £100, divided between the King and discoverer. | Repealed as to Protestant Dissenters by Toleration Act; and by 7 & 8 Vict., c. 102, as to Roman Catholics. |
| | Remaining in London, or within 10 miles, after conviction. | £100 forfeit. | |
| | Practising physic, law, or bearing office among soldiers, or in a ship, castle, or fortress. | £100 fine. | |
| | A married woman being a Popish recusant convict, whose husband is not, if she do not conform one whole year before his death. | Forfeits the issues and profits of two-parts of jointure and dower, and is disabled to act as executrix or administratrix to her husband, or to have any part of her husband's goods. | |

| Statutes. | Offences. | Penalties. | Repealed or in Force. |
|---|---|---|---|
| 3 James I. cap. 5. | A Popish recusant convict marrying, except in open Church, and according to the orders of the Church. | Disabled from having any estate of freehold in the lands of his wife; or if no lands, forfeits £100. | Repealed as to Protestant Dissenters by Toleration Act; and by 7 & 8 Vict., c. 102, as to Roman Catholics. |
| | A woman recusant married otherwise than as above. | Cannot claim dower or widow's estate. | |
| | A Papist not having a child baptised at Church. | The husband forfeits £100. | |
| | Not being buried in the Church or churchyard. | Executor or administrator fined £100. | |
| | Child sent beyond sea. | Disabled to hold lands or goods by descent or grant. | |
| | Popish patrons. | Disabled to present. | |
| | Popish recusant convict. | Disabled to be executor, administrator, or guardian. | |
| | Importing Popish books. | £40 forfeit, for every book. | |
| | A man or his wife, | May have their house searched by two Justices, for Popish books and reliques. | |
| | Keeping arms, crucifix, or reliques of value. | To be defaced and arms to be seized. | |
| 7 James I. cap. 6. | Refusing to take the Oath of Allegiance before one magistrate. | Disabled to execute any office, or to practise any liberal science for gain. | Repealed by 7 & 8 Vict., c. 102; and 9 & 10 Vict., c. 59. |
| | Married woman, being Popish recusant convict, not conforming. | Imprisoned till she conform, unless the husband pay £10 per month, or yield a third part of his lands. | |

| Statutes. | Offences. | Penalties. | Repealed or in Force. |
|---|---|---|---|
| 3 Car. I., cap. 2. | Conveying a child, or other person, beyond sea, with intent to enter a convent, college, school, or Popish family. | Disabled to prosecute in any suit in law or equity; to forfeit goods, lands, and rents. | Repealed by 7 & 8 Vict., c. 102. |
| 16 Car. I., cap. 27. | Archbishops, &c. | Deprived of all secular dignity or power. | Repealed by 13 Car. II., c. 2. |
| 13 Car. II. cap. 1., sec. 12. Corporation Test. | Nonconforming mayors, aldermen, and members of corporate towns or boroughs | To be removed, or not admitted unless they take the oaths of allegiance and supremacy, and also take the Sacrament at Church. | Repealed 1828, by 9 Geo. IV., c. 17, s. 1. |
| 13&14 Car. II., c. 1. | *Quakers* refusing to take an oath, or persuading others to do so, or assembling for worship. | Forfeit £5, for the first offence; £10, for the second; and for the third, to be transported to the plantations as slaves. | Repealed by Toleration Act as to Protestant Dissenters; enlarged as to *Protestants* whether Dissenters or not, by 52 Geo. III., c. 155; and by 7 & 8 Vict., c. 102, as to Roman Catholics. |
| 13&14 Car. II., cap. 4. | Keeping school without a Bishop's licence. | Imprisonment and £5 fine. | Repealed by 9 & 10 Vict., c. 59. |
| | Administering Sacraments in any other form than that prescribed in the Book of Common Prayer. | Penalty of £100 each time. | Repealed virtually as to Protestant Dissenters by Toleration Act. |
| 13 Car. II., stat. 2, c. 1. | Members of borough towns, mayors, and all other municipal officers and magistrates, *refusing* to renounce the Oath, or "Solemn League and Covenant," as being an unlawful oath. | Removed and displaced | Oath discontinued. |

| Statutes. | Offences. | Penalties. | Repealed or in Force. |
|---|---|---|---|
| 14 Car. II., cap. 4. Clergy Test | Not declaring assent to the Book of Common Prayer, on the feast of Bartholomew, 1662. | Deprived of all spiritual promotion. | In force. |
| | Taking ecclesiastical preferment before ordained a priest. | Forfeit £100 for every offence. | |
| | Not reading the Thirty-nine Articles, the first time of preaching, or not declaring their assent and consent. | Disabled to preach. | |
| 17 Car. II., cap. 2. | All persons, not having subscribed according to 14 Car., and all such as preach in Conventicles. | Not to come within five miles of any city, corporation, or parish. | Repealed by Toleration Act as to Protestant Dissenters. |
| 22 Car. II., cap. 1. | Every person, above sixteen, present at a Conventicle. | Fined five shillings for the first offence, and ten shillings for the second; if too poor to pay the fine, to be levied on any other offenders present. | |
| | Preachers at ditto. | Fined £20 for the first offence, and £40 for the second. | |
| | Every person suffering a conventicle to be held in his barn, house, or yard. | Fined £20, or levied upon others present. | |
| 25 Car. II., cap. 2. | Officers, civil and military, not receiving Sacraments at Church. | Disabled to enjoy the office or employment. | Repealed by 7 & 8 Vict., c. 102. |
| 29 Car. II., cap. 9. | "Atheism, blasphemie, heresy or schism, or other damnable doctrines and opinions." | Punishable by any Protestant archbishop or bishop by excommunication, and ecclesiastical censures, not extending to death. | In force. |

| Statutes. | Offences. | Penalties. | Repealed or in Force. |
|---|---|---|---|
| 30 Car. II., cap. 1. Parliamentary Test. | Peers and Members of the House of Commons not taking the Oaths of Supremacy and Allegiance, or not subscribing a Declaration against Transubstantiation, Invocation of the Virgin Mary, and other Saints, and the Sacrament of the Mass, as used in the Church of Rome. | Disabled to sit, or to take a legacy, to sue in any Court, or to become executor, administrator, or guardian, and to forfeit £500 for every offence. | Repealed by 10 Geo. IV., c. 7. |
| William & Mary, Sess. 1, cap. 8. | All ecclesiastical persons who do not take the Oaths of Supremacy and Allegiance appointed by this Act, instead of the former ones required by 1st of Eliz. and 3rd of James. | Deprived. | In force. |
| | All persons employed in any civil or military capacity, not taking the oaths. | Disabled. | Repealed by 7 & 8 Vict., c. 102, and 9 & 10 Vict., c. 59. |
| | Other persons refusing these oaths. | To be imprisoned three months, or fined forty shillings. | |
| William & Mary, Sess. 1, cap. 9. | Every Papist to remove, within ten miles of London and Westminster. | To remove; or be subject to fine and imprisonment. | |
| William & Mary, Sess. 1, cap. 15. | Every suspected Papist. | To keep no arms in his house; nor any horse above £5 value. | |
| | Concealing horses. | To be imprisoned three months, and forfeit treble the value of the horses. | |

| Statutes. | Offences. | Penalties. | Repealed or in Force. |
|---|---|---|---|
| William & Mary, Sess. 1, cap. 18. | Not going to some Assembly acknowledged by this Act on Sundays; and also Popish recusants; and such *as deny the doctrine of the Trinity.* | Not to receive benefit of this Act. | Repealed in 1813 as to Unitarians, by 53 Geo. III., c. 160. |
| | Quakers making two declarations—which were modified by the 8th Geo. I., cap. 6. | Exempted from the penalties of all laws against Popish recusants and Protestant nonconformists. | |
| William & Mary, Sess. 1, cap. 26. | Persons seized of an advowson to any Living, Free School, or Hospital, in trust for a Papist. | Trustee prevented presenting; Universities or Archbishop of Canterbury to present. | Repeated by 10th Geo. IV., cap. 7. |
| William & Mary, Sess. 2, cap. 2. | Holding communion with the Church of Rome, or marrying a Papist. | Disabled from inheriting the Crown, or exercising any royal power. | |
| 7 & 8 Wm. and Mary, cap. 27. | In default of taking the oaths prescribed by the 1st of William. | Liable to all penalties, and might be indicted as a Popish recusant convict. | |
| 7 & 8 Wm. and Mary, cap. 34. | Quakers' affirmation admitted instead of an oath. | Still not qualified to give evidence in any criminal cause, to serve on a Jury, or to be in any place of profit in the Government. | Repealed as to criminal and civil causes, where an oath is, or may hereafter be required, by the 9th Geo. IV., c. 32. |
| 11 & 12 Will., c. 4. | Apprehending a Popish bishop, priest, or Jesuit, and convicting him of saying Mass, or exercising his functions within the realm. | To receive £100 from the sheriff of the county for the conviction. | Repeated by the 18th Geo. III., c. 60, s. 5; but repealed by 9 & 10 Vict., c. 59. |
| | Every such person. | To suffer perpetual imprisonment | |

| Statutes. | Offences. | Penalties. | Repealed or in Force. |
|---|---|---|---|
| 11 & 12 Wm. III., cap. 4. | Every Papist, after 10th of April, 1700. | Disabled to purchase land in the kingdom, or any profits out of the same. | Repealed by 9 & 10 Victoria, c. 59. |
| 13 William, cap. 6. | Abjuration Oath, which denounced the Pretender, imposed. | | |
| 2 Anne, cap. 6, s. 1. | Seducing from the Protestant Religion. | Premunire, both as to the Papist and Protestant. | Repealed by 9 & 10 Victoria, c. 59. |
| 4 Anne, cap. 8. | Denying the right of the Queen to the Crown. | | |
| 5 Anne, cap. 8. | By the Union of England and Scotland, the King or Queen, at coronation, to take and subscribe an Oath to maintain and preserve inviolably the doctrine, worship, discipline and government of the Church of England, as by law established. | | In force. |
| 10 Anne, cap. 2. | Officers of the Crown present at a Conventicle. | To conform within the next term or session. | Repealed by 5th Geo. I., c. 4. |
| 12 Anne, cap. 7. | Nonconformist Schoolmasters, after the 1st August, 1714. | Committed to the Common Gaol for three months. Incapable of keeping School. | Repealed by 19th Geo. III., c. 44 (1779), s. 2. |
| | Resorting to a Conventicle. | Liable to the above penalties. | |
| 12 Anne, cap. 12. | Repetition and enlargement of the 3rd James, cap. 6, and 1 William, cap. 26. | | |

| Statutes. | Offences. | Penalties. | Repealed or in Force. |
|---|---|---|---|
| 12 Anne, cap. 12. | Conforming to the Church, not to divest the Presentee. | | Repealed by 19th Geo. III., c. 44 (1797), s. 2. |
| 1 Geo. I., cap. 50. | All manors, lands, money, goods, &c., given to, or to be enjoyed by any Abbey, or Religious House or Seminary, for Popish or superstitious use. | Forfeited to the Crown for the use of the public. | |
| 1 Geo. I., cap. 55. | Popish Recusants, or persons professing the Popish religion before 20th January, 1716. | To take the oaths, and *register their names and lands*, before the Clerk of the Peace for the county, which, by the 9th Geo. I., cap. 18, appear, on the 19th February, 1719, to have amounted to £354,450 6s. 6¾d. per annum, over and above copyhold fines. — *See under 9th George.* | |
| 9 Geo. I., cap. 18. | ..... | One hundred thousand pounds levied, from 23rd March, 1723, for the use of the public, from all such Papists in England, Wales, and Berwick on Tweed, as were eighteen years of age—over and above the *double taxes* to be paid by them. | |
| 9 Geo. I., cap. 24. | Repeated the 1st of George, cap. 55, as to registration of lands of Papists; and extended its operations to *Scotland.* | | |

Religious opinions.

Before we pass from this matter of penal laws, it may not be undesirable to review, in outline, the history of those enactments which have now placed religious freedom upon a different basis than ever it had previously stood in this country.

The Revolution in 1688 was the first step towards the attainment of this mighty result. The 1st of Will. and Mary, cap. 18, is entitled, "An act for exempting "their majesties' Protestant subjects dissenting from "the church of England from the penalties of certain "laws." Its preamble states, that "some ease to scru- "pulous consciences, in the exercise of religion, may "be an effectual means to unite their majesties' Pro- "testant subjects in interest and affection." Nonconformity no longer exposed any one to an ecclesiastical suit; but whatever might appertain to the "*exercise of* "*religion*"—whether by preaching, administering sacraments and other ordinances—was allowed By the 19th Geo. III., cap. 44 (A.D. 1779), this act was declared a public one, and, therefore, a part of the English constitution.

By the 52nd Geo. III., cap. 155 (1812), Wesleyan Methodists, who do not style themselves "Dissenters," were placed under the regulations and protection provided by the Toleration Act. The word "Protestants" being the only term used in the act.

The repeal of the Test and Corporation Acts, by the 9th of Geo. IV., cap. 17, in 1828, was the next mighty stride made in favour of religious freedom. For more than 150 years, Protestant dissenters had been denied a place in municipal corporations, although they had never been excluded a seat in parliament. The anomaly and reproach have ceased to dishonour the statutes of our country.

Next followed the admission of Roman Catholics into the senate, by the 10th George IV. (1829), cap. 7, extracts from which will be found in the Appendix.

Each one of these three measures cost immense pains, anxiety, and expense to bring about. In every instance the most strenuous opposition was raised against them. In the case of the repeal of the Test and Corporation Acts, the then government was opposed to the relief. But the resolution proposed by Lord John Russell, in the House of Commons, having been adopted by a majority of forty-four, the government yielded all further opposition.

It is due to historic truth to refer to another legislative measure. It is the 9th and 10th Vict., cap. 59, and refers to religious opinions. The laws it abolished are given in the preceding tabular statement, so far as they apply to distinct previous acts. There are several, however, not mentioned therein. For instance, it abrogates a statute of the 54th and 55th Henry III., (and who, by the bye, except Geo. III., was the only English sovereign that sat upon the throne more than

CHAP. IV. Sect. 4.

fifty years,) in 1271, against the Jews. It also repeals thirty other statutes against Catholics, Nonconformists, Jews, and others, who, for holding about thirty-five or forty different "*religious opinions*," might, at any time, have been punished by various laws, some of which had slumbered nearly six hundred years.

Religious opinions.

The research after these laws had been entrusted to a commission, issued by the government of 1845, of which the chancellor, Lord Lyndhurst, was one of its members, and who introduced and carried through the Lords this splendid memorial of the dispositions that then ruled the cabinet. It did even more: it placed the Jews, "in respect to their schools, places for "worship, education, and charitable purposes, and "the property held therewith," on the same footing as the Protestant dissenters, *i.e.*, granted them full toleration.

Jews relieved.

## SECTION V.—THE PRIESTHOOD.

A distinction has always existed, not only between priests and people, but among ecclesiastics themselves. There were "the religious" and the "secular clergy." The former belonged to monastic institutions; took vows of celibacy, perpetual poverty, and cheerful obedience to the superior of their order. "The secular" were such ecclesiastics as did not fasten around themselves these heavy iron chains, but who were, nevertheless, subject to the laws of the church; such are archbishops, bishops, deans, and the whole body of the clergy.

The distinction between priests and people is thus fixed by canon. "To *us* it is said by our Lord, 'Ye are "the salt of the earth.' If, then, Christian people are "God's meat, and *we* the salt, then shall the people, by "the Divine assistance, *by our means* be with pleasure "enjoyed by God. As the bishops are in the stead of "the apostles in the assembly of the saints, so are the "mass priests in the stead of Christ's disciples. The "bishops have the order of Aaron; the mass priests "the order of his sons. It behoves you always to be "mindful how high the dignity of the order is, and the "consecration and the anointing of your hand which "ye received from the bishop when ye took orders."

The order of priesthood. Canon, A.D. 994.

The order of priesthood, is the highest *spiritual* distinction. It is *per se*, complete in itself. Whatever *official* dignity may be possessed by a priest, adds nothing to his sacerdotal character. Thus, the canon of A.D. 740, says, "the bishop in the church is to sit "elevated above the bench of priests, but in the house "let him know himself to be a colleague of the priests."

Another canon, made more than two hundred years after, viz., in 957, declared, "There is no more between "a bishop and a priest, but that the bishop is appointed "to ordain, to bishop children, and to hallow churches, "and to take care of God's rights, for they would "abundantly be too many if every priest did this; he "hath the *same order*, but the other is more honourable."

Sacred character of the order.

The question is repeatedly asked,—Does ordination, or conferring the order of the priesthood, impart any spiritual character? The old canons reply, it does.

CHAP. IV. Sect. 5.

The priesthood.

Canon, A.D. 1237.

A.D. 1281.

"The sacred order is to be conferred upon worthy "men and in a worthy manner, because other sacra- "ments are conferred by him that is ordained." And another canon more explicitly says, "Whereas, accord- "ing to theological doctors, the clerical army is fortified "with seven orders, by every one of which a *character* "*is impressed on the soul*, and an increase of grace "received."

A.D. 1562.

This essentially dangerous dogma has virtually been set aside by the 25th article of the church, which says, "There are two sacraments ordained of Christ our "Lord in the Gospel, baptism and the Lord's supper. "Those five, commonly called sacraments, *i.e.*, con- "firmation, penance, *orders*, matrimony, and extreme "unction, are not to be counted for sacraments of the "Gospel, being such as have grown partly of the "corrupt following of the apostles; partly are states of "life allowed by the Scriptures." "They have not "any visible sign or ceremony ordained of God."

External appearances of the priesthood.

If from the assumed sacredness of a person because he bears a particular office, we turn to the external form in which both the person and the office were presented to the people, we shall find that just in proportion as the person lost moral elevation, so his office was loaded with outward ceremonies. In the ancient canons we have innumerable enactments as to priest's apparel, both in public and at the altar—the tonsure, or crown, as it was called. So late as 1342, a canon refers to the "bishop's barbers," whose duties were to see that the cut of the clerk's hair was precisely canonical

before he saw the bishop. Among the heathens, the several modes of cutting or shaving the hair were tokens of devotion to different idols. The Danes introduced the custom into England; but a canon, in 960, during King Edgar's reign, forbid "scandalous shavings "of the hair." By the 74th canon of 1603, "no "ecclesiastical person shall wear any wrought nightcap, "nor any light-coloured stockings."



It would have proved a vain attempt to have commenced with a positive interdiction of priestly marriage. By degrees, the matter has been managed. In 740, we have this decree. The canons teach, "that if any "man *marry a widow*, or an abandoned woman; or if he "*marry a second wife*, he never be made *deacon or priest*." Another canon of the same date says, "No priest shall "ever permit any woman [under the pretence of her "being a sister] to dwell with him in his own house."

The state of morals induced by these and many subsequent laws of a similar description, will be best seen by the canon of A.D. 1009. It says, "We command "and charge all God's servants, and especially the "priests, that they obey God. Let them earnestly "consider that they cannot lawfully cohabit with a "wife: yet this is worse, that some have two or more; "and some, though they dismiss her whom they "formerly had, afterward take another, the former "living. Let him who will desist from this, and preserve "his chastity, obtain God's mercy; and as an addition to "worldly honour we decree that he be equal to a thane, "both as to his weregild and to his rights in his life-

CHAP. IV. Sect. 5.

"time, and at his burial; and let him that is averse to
The priesthood. "that which benefits his order, be deprived of his
"honour both in relation to God and the world."

Canons, A.D. 1237. Matrimony of priests was this year denounced, for two reasons—"The perdition of souls, and *lessening the* "*goods of the church.*" Wives and children were, therefore, deprived of any goods which priests might have left; but, instead, "they were to be given to the "church."

Statute, A.D. 1540. The 31st Henry VIII., cap. 14, sec. 19, declared the priest that lived with his wife, or with whom he had contracted matrimony; and the woman also, to be felons.

The evils of this system are patent in the history of Europe. Happily, the Reformation, in a measure, purged the *nation* from the innumerable mischiefs that could not fail to arise from this outrage upon humanity and insult to the purposes of heaven. The 32nd article (A.D. 1562) states, "Bishops, priests, and deacons, are "not commanded, by God's law, either to vow the estate "of single life, or to abstain from marriage. Therefore "it is lawful for them, as for all other Christian men, "to marry at their own discretion, as they shall judge "the same to serve better for godliness."

Statute, A.D. 1548 and 1549. The statute of the 2nd and 3rd Edward VI., cap. 21, set aside "all and every law and laws positive, canons, "constitutions, and ordinances made by authority of "man only, which do prohibit or forbid marriage to "any ecclesiastical person or persons whatsoever." This act was enlarged by the 6th of Edward, but both

were repealed, immediately upon the accession of Queen Mary: nor was it until the 1st of James, cap. 25, (a period of fifty years having thus intervened,) that the last statute of Edward was revived and made perpetual.

Ordination of priests. Canons, A.D. 740

The *ordination of priests* to spiritual offices was at a very early period assigned to bishops and other ministers. "Let not a bishop ordain clerks without a council of "priests." "Enquiry into former life," was also A.D. 747. enjoined, as well as "into his present probity of manners "and knowledge of the faith." These two principles have always been retained in the church; and are broadly stated in the latest canons. Thus, "The A.D. 1603. "bishop, before he admit any person to holy orders, "shall diligently examine him in the presence of those "that shall assist him at the imposition of hands. Pro-"vided that they who shall assist the bishop in *examin-"ing and laying on of hands*,* shall be of his cathedral "church, or other *sufficient preachers* of the same diocese "to the *number of three*, at the least; and if any bishop "or suffragan shall admit any to sacred orders, who is "not so qualified and examined, the archbishop of his "province, having notice thereof, and being assisted "therein by one bishop, shall suspend the said bishop "or suffragan, so offending, from making either deacons "or priests for the space of two years."

With one exception, about to be referred to, this

* In the form of making priests appointed in Edward the Sixth's first and second Prayer Book, it is prescribed "that the *bishops, with the priests* "present, shall lay their hands severally upon the head of every one that "receiveth orders."—*Liturgies of Edward VI., published by the Parker Society*, pp. 179, 348.

CHAP. IV. Sect. 5.

The priesthood.

order of priesthood, thus constituted, is the only one recognised by the church in England. The twelfth canon of 1603 says, "Whosoever shall hereafter affirm "that it is lawful for any sort of ministers and lay "persons, or of either of them, to join together, and "make rules, orders, or constitutions, in causes eccle-"siastical, without the king's authority, and shall submit "themselves to be ruled and governed by them, let "them be excommunicated, *ipso facto*, and not be "restored, until they repent and publicly revoke those "their wicked and anabaptistical errors."

The exception relates to the orders of the church of Rome. These are by statute law and by the common custom of the church of England declared and admitted to be valid. The 14th Charles II., cap. 4, sec. 14, prohibits every person from administering the sacraments, "before such time as he shall be ordained a "priest, according to the form and manner by the "Book of Common Prayer prescribed, *unless he shall* "*formerly have been made by episcopal ordination.*"

The *Moravians*, also, by the 22nd Geo. II., cap. 30, sec. 5, (A.D. 1749,) are recognised as a "Protestant episcopal "church," having "a bishop or pastor;" but then it may be doubted whether this act is not restricted to the American colonies; and by the 10th George IV., cap. 7, sec. 24, "The Protestant episcopal church of England "and Ireland," as also "the Protestant presbyterian "church of Scotland, and the doctrine, discipline, and "government thereof," are both stated as being "esta-"blished by law."

Prior to ordination, the minister must subscribe the three following articles :—

" 1. That the king's majesty, under God, is the only " supreme governor of this realm, as well in all spiritual " or ecclesiastical things or causes, as temporal ; and " that no foreign prince, person, prelate, state, or " potentate, hath or ought to have any jurisdiction, " power, superiority, pre-eminence, or authority, eccle- " siastical or spiritual, within the realm.

" 2. That the Book of Common Prayer, and of " ordering of bishops, priests, and deacons, containeth " in it nothing contrary to the Word of God, and that " it may lawfully so be used ; and that he himself will " use the form in the said book prescribed in public " prayer and administration of the sacraments, and " none other.

" 3. That he alloweth the book of articles of religion " agreed upon in convocation, 1562; and that he " acknowledgeth all and every the articles therein " contained, being in number thirty-nine, besides the " ratification, to be agreeable to the Word of God."

He must also add this declaration :—" I do willingly " and *ex animo* subscribe to these three articles above- " mentioned, and to all things contained in them." Every priest is thus brought under a double set of promises ; one relating to the state (first article), and the other to the church (second and third.)

The *qualifications* of persons about to be ordained are various. Deacon's orders cannot be conferred till the person has attained the age of twenty-three. Priests

CHAP. IV. Sect. 5.

The priesthood.

must be twenty-four at the time of ordination. They must have taken "some degree of school in either of the "Universities; or be able to yield an account of their "faith in Latin, according to the articles of 1562, and "to confirm the same by sufficient testimonies out of "the Holy Scriptures." So the 34th canon, of 1603, enjoins. Statute law has added, "or have special gift "and ability to be a preacher," 13th Elizabeth, cap. 12, sec. 5. They must, by the 33rd canon, have a title to some preferment, unless the bishop shortly after admit him to a curacy or benefice. If ordained without these titles, the bishop will be bound "to maintain him "with all things necessary."

If the reader desires to ascertain the progress made in the legally required proofs of the moral and intellectual qualifications of the priesthood, he will obtain the illustration by contrasting the laws (canon and statute) just stated, with those of former periods. In 1281, the constitution of Peckham complained of "the "ignorance of priests." "As a remedy, we ordain that "every priest do, four times in the year, expound to the "people the fourteen articles of faith, the ten com-"mandments of the decalogue, the two precepts of the "Gospel, or love to God and man, the seven works of "mercy, the seven capital sins, and the seven sacra-"ments of grace." And that there might be no mistake or excuse, the canon briefly summed them up.

The recital of the whole exposition would be tedious. Its merits may, however, be easily ascertained, by the following explanation of "Honour thy father and

"mother." It says, "In this we are explicitly commanded to honour our parents, both in temporals and "spirituals; yet not our carnal father and mother, but "our spiritual, is here to be understood; so that father "signifies the prelate of the church, whether mediate "or immediate; mother signifies the church, which "hath all true Catholics for her sons." It also refers to the sacraments. The administration of "extreme "unction" was enjoined to the dying, "and to those in "a frenzy or alienation of mind, for we believe, and "have learned by experience, that the receiving thereof "contributes to their getting a lucid interval, or at "least their spiritual good, upon condition that they be "sons of predestination, how frantic soever they be."

In 1466, these injunctions were repeated, *verbatim et literatim*. Well might Johnson, in his "Ecclesiastical Laws," add in a note, under these last-mentioned constitutions, "It is sad to consider, that in [nearly 200] "years' time, the English clergy had gotten no better "constant instructions for the people than those of "Archbishop Peckham."

Could the "ignorant priests" who, 569 years ago, "misled rather than taught" the people, witness the mighty changes since wrought among "the English "clergy," they would stand amazed. Streamlets of light have been silently pouring in from various quarters upon that body, and prepared it to become a blessing, and not, as then it proved, a curse to mankind.

To return to the subject of ordination of priests. This is performed in the manner prescribed by law,

CHAP. IV. Sect. 5.

The priesthood.

Assumed concurrence of the people.

and is contained in the Book of Common Prayer. Every edition does not contain the form, but the larger copies generally have it. By this form, the ordination of priests proceeds upon the assumed concurrence of the people. This nominal (for it is only so) right is thus expressed in the first and second Prayer Books of Edward VI.,* and is retained in the Common Prayer Book of the present day :—

" And then the bishop shall say to the people, ' Good " people, these be they whom we purpose, God " willing, to receive this day unto the holy office of " priesthood. For after due examination we find, not " the contrary, but that they be lawfully called to their " functions and ministry, and that they be persons meet " for the same. *But yet, if there be any of you*, which " knoweth any impediment or notable crime in any of " them, for the which he ought not to be received to " this holy ministry, now, in the name of God, declare " the same.' Then the bishop shall say unto them " which are appointed to receive the said office, as fol- " loweth, (among other things), ' And that this your " promise shall move you to do your duties, ye shall " answer plainly to these things, which *we, in the name* " *of the congregation*, shall demand of you touching the " same.' "

The bishop having received the replies, and invoked " strength and power " from Almighty God, that each one may accomplish his work, it is added :—

* " Liturgies of Edward VI.," published by the Parker Society, pp. 174–176, 344–346.

" After this, the congregation shall be desired *secretly* " *in their prayers* to make humble supplications to God " for the aforesaid things, for the which prayers there " shall be a certain space kept in silence."

We have referred, so far, to the ordination of a *priest* only, but no one is so appointed until after he has been ordained deacon. At one time, it was necessary he should have remained deacon one whole year, " to the " intent he may be perfect;" " whereof if he be found " faithful and diligent, he may be admitted by his " diocesan to the order of priesthood." But by the 32nd canon of 1603 the rule is relaxed. Although " no bishop " can make any person, of what qualities or gifts soever, " a deacon and minister in one day," it yet says, " Not " that always every deacon should be kept from the " ministry for a whole year, when the bishop shall find " good cause to the contrary; but that there being now " four times appointed in every year for the ordination " of deacons and ministers, there may even be some time " of trial of their behaviour in the *office* of deacon, before " they are admitted to the *order* of priesthood."

The difference between a priest and deacon consists in the deacon being appointed to assist the priest in divine service. Anciently he said the responses and performed such duties as now are discharged by parish clerks. His duties consist in visiting the sick, reading the Scriptures and homilies in the church, teaching the catechism, baptising infants, and preaching, if specially licensed by the bishop to do so. He cannot pronounce the absolution. To the deacon, the bishop at ordination

CHAP. IV. Sect. 5.

The priesthood.

says, "Take thou authority to read the Gospel, and to "preach." To the priest it is said, "Receive the Holy "Ghost: whose sins thou dost forgive, they are forgiven; "and whose sins thou dost retain, they are retained."

The church is said to be an army, and has its staff, as well as its main body. "Faithful men," constitute the latter. Priests, (including dignitaries,) the former. These are especially placed under certain laws, in relation to each other. The 53rd canon of 1603 forbids preachers "to impugn or confute any doctrine delivered "by any other preacher, in the same church, or in any "church near adjoining, before he hath acquainted the "bishop of the diocese, and received order from him "what to do in that case." By this means, "offence "and disquietness unto the people" are sought to be prevented. "Once to abuse" this rule, exposes the preacher to the visitation of the bishop.

Conformity of priests.

The 54th of the same canon says, "If any man "licensed heretofore to preach, by any archbishop or "bishop, or by either of the Universities, shall at any "time from henceforth refuse to conform himself to "the laws, ordinances, and rites ecclesiastical, esta-"blished in the church of England, he shall be admo-"nished by the bishop of the diocese, or ordinary of the "place, to submit himself to the use and due exercise "of the same. And if, after such admonition, he do "not conform himself within the space of one month, "we determine and agree, that the licence of every "such preacher shall thereupon be utterly void and "of none effect."

The priesthood.

Renunciation of orders. Canons, A.D. 1603.

Modern law.

But though the bishop may thus silence the priest, the priest cannot escape from under the power of the bishop. The 76th canon therefore says, "No man "being admitted a deacon or minister, shall from "henceforth *voluntarily relinquish* the same, nor afterwards use himself in the course of his life as a layman, "upon pain of excommunication. And the names of "all such men so forsaking their calling, the churchwardens of the parish where they dwell shall present "to the bishop of the diocese, or to the ordinary of the "place, having episcopal jurisdiction."

Ancient laws.

These laws may seem to place the clergy under awful restraints. But a reference to other ages of the church will show that the same rules have been carried out.

A.D. 734.

Thus, in A.D. 734, a canon says, "If a priest or deacon, "being ejected by his proper bishop, for his manifest "crimes, [disobedience was one,] presume to minister in "another church, let him be expelled by the bishop of "that diocese, as soon as it is known, and so let him not "be settled in any mansion of the churches, but be "always a wanderer and vagrant, till being humbled by "long affliction, he return to undergo the law of the "church."

Canons, A.D. 960

We have another ancient law in 960, which says, "And that no priest of his *own accord desert the church* "to which he has been blest and married."

A.D. 1102.

The canon of A.D. 1102 says, "Monks, or clergymen, "who have forsaken their order, shall either return or "be excommunicated." They may, however, be de-

CHAP. IV. Sect. 5.

The priesthood.

prived. In 1849, the Rev. Mr. Shore quitted the church, and was, for the offence, prosecuted by the bishop of Exeter, and imprisoned for non-payment of costs. Relief for the future was sought, by a bill brought into parliament, which gave "a person in "holy orders" all the benefit of the Toleration Act for nonconformity. But it failed, as it deserved to do; for it provided that such person, having declared himself a dissenter, it "should be attended with the same "consequence as a sentence of deprivation of his pre-"ferment, and of deposition from holy orders." The law, therefore, remains as it was; *i.e.*, clergymen cannot relinquish orders without exposure to prosecution and probable ruin.

Deprivation of orders.

There are nearly thirty different offences which expose any priest to the forfeiture of his ecclesiastical position. Some of these offences have been created by canon, and others by statute, law.

Those of canon law are—

1. *Disclosing confessions.* (See "Confession," p. 145.)
2. *Wearing arms.*
3. Non-residence.
4. Demanding money for sacraments.
5. Intrusion into another priest's benefice.
6. Violating a sanctuary.
7. Concubinage.
8. Wearing an irregular habit.—Canon, A.D. 1603, art. 74.
9. Keeping fasts other than those appointed by law. —*Ibid.* art. 72.

10. Being present at sermons or prophecies in market towns.—Canon, A.D. 1603, art. 72.

11. Holding private conventicles.—*Ibid.* art. 73.

12. Attempting to cast out devils without bishop's licence.—*Ibid.* art. 72.

13. Refusing to catechise children every Sunday.—*Ibid.* art. 59.

14. Receiving to the communion out-parishioners, or baptising their children.—*Ibid.* art. 57.

15. Refusing to christen or bury, if the requirements in the Book of Common Prayer be complied with.—*Ibid.* art. 68.

Those of statute law are—

1. Simony; or selling benefices for money, benefit, or profit.—31st Eliz., c. 6.

2. Want of orders.—Laymen could be, and were formerly presented to livings; but by 13th and 14th Charles II., c. 4, sec. 14, "*henceforth* no person shall "be capable to be admitted to any benefice or ecclesi-"astical dignity or promotion before he is ordained a "priest."

3. Illiteracy.—This is *malum in se.*

4. Non-age.—13th Eliz., cap. 12.

5. Conviction of felony.—23rd Henry VIII., cap. 1, sec. 6, and cap. 11, sec. 3.

6. Refusing to use the Book of Common Prayer.—2nd and 3rd Edward VI., cap. 1.

7. Not reading the Thirty-nine Articles in the church of which he has the cure, or maintaining any doctrine contrary thereto.—13th Eliz., cap. 12.

8. Not being admitted to administer the sacraments within one year after induction.—13th Eliz., cap. 12.

9. Depraving Common Prayer Book.—13th Eliz., cap. 12.

10. Infidelity—such as heresy, schism, &c.—29th Charles II., cap. 9.

11. Vices—such as drunkenness, incontinence.

12. Disobedience to the laws and constitutions of the church.—(*Burn*, 143.)—Agreed to by all the justices, 2nd James I.

13. Perjury.

14. Dilapidations or alienations.

By the 122nd canon of 1603, it is provided that in all cases of *deprivation of orders*, the sentence must be pronounced by the archbishop or bishop, assisted by such other ecclesiastics as he may choose to select. But *suspension from office*, for a limited period, or from discharging any office in any particular diocese or province, may be pronounced by the ecclesiastical judge, be he layman or clergyman, before whom the trial took place.

Persons in holy orders may not sit in parliament.—41st Geo. III., cap. 63, and 10 Geo. IV., cap. 7.

Nor be engaged in trade or trading companies.—1st and 2nd Vict., cap. 10; and 4th and 5th Vict., cap. 14, sec. 2.

## SECTION VI.—RELIGIOUS CEREMONIES.



"Christianity entered not anywhere, with an exter- "nal discipline."* Principles took precedence of rites. The common sense of mankind, has, however, been most grievously insulted by some theologians attempting to prove that ceremonies are as essential as principles.

"Ceremonies are the leaves that defend the blossoms "and the fruit, but if they grow over-thick and rank "they hinder the fruit from coming to maturity, and "then the gardener plucks them off."—*Archbishop Bramhall's Works*, vol. iii. p. 170.

The fondness men have ever manifested to render religious observances and obligations as easy as possible, has led them into a ready compliance with the external forms of any system of religion. They have but to be cheated into the belief that the "outward "sign" declares the fact of "an inward grace," and in nothing will they evince so cheerful and ardent a compliance with prescribed rules, as when required to observe religious ordinances. Let those forms be never so numerous, unmeaning, absurd, or expensive, only let them be deemed *indicators* of principles,—essential to salvation, or even passports to a status in society,—and crowds of conformists will hasten to the observance.

* Lord Chief Justice Hale, as cited by Lord Hardwicke.—*Hardwicke Reports*, by Lee, p. 336.

CHAP. IV. Sect. 6.

Religious ceremonies.

Baptism.—The first religious ceremony legally imposed upon the Christian church was the rite of baptism. Thus, among the earliest canons, we find it enacted:—

Baptism. Canons, A.D. 693.

"Let a child be baptised within thirty nights. If it be "otherwise, let the father make satisfaction with thirty "shillings. If it then die without baptism, let him "make satisfaction with all that he hath."

Fines continued to be imposed for omission. Among other offenders was the priest, who, "*If so drunk*," says

A.D. 696.

the canon of A.D. 696, "that he could not baptise," was to be suspended from his office during the pleasure of the bishop.

Nor did the parent escape punishment for allowing his child to remain and die "a heathen." How deeply sunk in immorality must have been the priesthood, and in ignorance the people, ere such a law as this could have passed! The next was as absurd. It says,

Canons, A.D. 740.

"Let the parent whose child is dead without baptism, "through his neglect, do penance one year, and never "live without penance. If the priest, whose duty it "was, neglected to come, though asked, let him be "chastised by the doom (law) of the bishop for *the* "*damnation of a soul.* Nay, it is commanded that all "men *should snatch a soul from the devil by baptism.*"

Five hundred years wrought no change upon the minds of priests or people. Drops of water, externally applied, could, it was believed, save a soul! Rome taught, and the people believed, the absurdity. Othobon, the legate from the Pope, in 1268, confirmed the false-

Canons, A.D. 1268.

hood. He commences his constitutions thus:—

"Baptism is known to be the first plank which brings "those that sail through this dangerous world to the "port of salvation. And (since no one ought to die "without receiving this sacrament) being administered "in the form of the church, it is effectual to salvation." "The first plank of salvation!" Who that ever trusted to it escaped shipwreck?

That the efficacy of baptism lies not in its being administered by the priest, is attested by the canon, which says, "It is allowed to laymen, or women, to "baptise children in case of inevitable necessity; and "such baptism is evidently sufficient to salvation, if the "due form be observed."

Canons, A.D. 1281.

The delusion has been kept up. The Book of Common Prayer, prepared by Archbishop Cranmer, in the time of Edward VI., (said to have been "con-"cluded by the aid of the Holy Ghost,") declares baptism to be "a holy sacrament." And in the second Book of Common Prayer, issued by legal authority during the same reign, it is declared that children, by baptism, "be regenerate and grafted into the body of "Christ's congregation." The Common Prayer, *now* in use, employs stronger terms.

A penal sanction still hangs over the head of the father or mother who neglects to have this rite performed. Either one may be dragged into the ecclesiastical court, according to the unrepealed statute of the 5th of Elizabeth, cap. 23, sec. 13, "for refusing to "have his or their child baptised."

More than this, the Rev. — Gorham was refused

CHAP. IV. Sect. 6.

Religious ceremonies.

induction into a benefice by Dr. Philpotts, bishop of Exeter, for no other reason than that he did not believe baptism, *per se*, conveyed any spiritual benefit. The case having been argued at great length in the court of Arches, the judge (Sir Herbert Jenner Fust) decreed, that the bishop was right in refusing to induct a clergyman not sound in the faith. Seldom has a theological question stirred up more legal strife. Against the judgment of the Arches court an appeal was made to the judicial committee of the privy council; and by them it was reversed. A prohibition to restrain the archbishop of Canterbury and the dean of the Arches court from carrying the judgment of the privy council into effect, was then moved for in the court of Queen's Bench, and refused. A second application was made to the court of Common Pleas, and there also refused; a third time the court of Exchequer was applied to, and a rule *nisi* having been in this last instance granted, which in the two other courts had been denied, the cause came on for argument, and, after considerable discussion, was there also refused. It is said that the costs of this suit on both sides amounted to £80,000.

Fasts.

Canons, A.D 740.

FASTS.—It was penal, according to canon law, to eat flesh on fasting days. "Let no one presume to break "publicly enjoined fasts, lest he incur the wrath of "God."

A.D. 747.

One of the solemn fasts was declared to be "the "day of the deposition (death) of St. Augustine, the "archbishop and confessor, (who being sent to the

" nation of the English, first brought the knowledge of " faith, the sacrament of baptism, and the notice of the " heavenly country,) which is the seventh of the " kalends of June."

In another part of this same canon, fasting by means of the psalmody of others is allowed, although somewhat condemned. It states, " that a rich man, desiring " speedy reconciliation might be granted him for gross " sins, affirmed by letters that that sin of his was so " fully expiated, that if he could live three hundred " years longer, his fasting was already paid by the " psalmody, fasting, and alms of others."

To recite all the legalised follies committed upon this subject, would tire the patience of the reader. He will, however, observe that canon law has never brought any relief upon this subject. It has been left for the statute to clear away the rubbish. Thus, the 5th and 6th Edw. VI., cap. 3, declared that many of the saint-days formerly kept should no longer be observed " as " holy days." Still, after the reduction, there remained twenty-eight days in the year which " were commanded " to be kept."

Statute, A.D. 1552.

Elizabeth's parliament went a step further, and cut up the principle. A law, entitled, " For the maintenance " of the navy," declared that whoever, by preaching, or " teaching, shall notifie, that any eating of fish, or for- " bearing of flesh, is of any necessity for the saving of " the soul of man, or that it is the service of God, other- " wise than as other politick laws are and be, such " persons shall be punished as spreaders of false news,"

A.D. 1564.

CHAP. IV. Sect. 6.

*i.e.*, stand in the pillory, and have both the ears cut off, or pay a fine of £100.—5th Elizabeth, cap. 5.

Religious ceremonies.

Anointing. Canons, A.D. 957.

ANOINTING.—"Holy oil," as it was called, was used both at baptism and the visitation of the sick. "The "priests shall have oil hallowed distinctly for children "and for sick men, and solemnly anoint the sick in "their bed."

In the order of baptism, as set forth in King Edward the Sixth's reign, it is required, after the priest had thrice dipped the child in water, that "he anoint the infant "upon the head, saying, 'Almighty God, the Father "who hath regenerate thee by water and the Holy "Ghost, and hath given unto thee remission of all thy "sins, vouchsafe to anoint thee with the unction of "His Holy Spirit."

In his second Book of Common Prayer, anointing was omitted; but, instead thereof, the priest was to "make a cross upon the child's forehead."

At the visitation of the sick, that rubric states, "if the "sick person desire to be anointed, the priest shall "anoint him upon the forehead or breast only, making "the sign of the cross."

This was omitted in Edward's second Prayer Book, and has not again been inserted.

Consecration.

CONSECRATION. — Things, as well as persons and places, were deemed hallowed among the Jews. It is, however, a remarkable fact, that the priests, under the theocracy, never assumed a power by which they could *communicate* a sacred character. All they did, was to set things apart from common to religious purposes.

Religious ceremonies.

But dedication to a sacred use did not include the communication of an inherent spiritual character. "Thus "saith the Lord of Hosts, Ask now the priests concern- "ing the law, saying, If one bear holy flesh in the skirt "of his garment, and with his skirt do touch bread, or "pottage, or wine, or oil, or any meat, shall it be holy? "And the priests answered and said, No. Then said "Haggai, If any one that is unclean by a dead body "touch any of these, shall it be unclean? And the "priests answered and said, It shall be unclean."*

It has been reserved for priests under the Christian dispensation to invert this order of things. They have never declared things or persons ceremonially unclean; but they *have* declared things or persons inherently holy, after passing through a prescribed ritual. Thus they have consecrated *bread and wine.* This was anciently called "housel" and "the oblation." Now it is called the sacrament.

Consecration of bread and wine.

"Know now that the Lord, who was able to change "the bread into his body, in a spiritual manner, he his "self daily blesseth bread and wine by the hand of his "priests into his spiritual body and blood."

Canons, A.D. 957.

The priest was himself to bake the bread. "And "we charge you, that the oblation which ye offer to "God in that holy mystery, be either baked by yourself "or by your servants in your presence."

A.D. 944.

Not only the elements of bread and wine, but bricks, stone, timber, and every other material employed in erecting churches, receive a spiritual element. What

Consecration of churches.

* Haggai, ii. 11—13.

CHAP. IV. Sect. 6.

Religious ceremonies.

that element is, has never been defined. Adroitly it has been thrown into a mystery. Thus Othobon decreed—

A.D. 1268.

"The church of God, not differing as to its materials "from private houses, by the *invisible mystery* of dedica- "tion is made the temple of the Lord, to implore the "expiation of sins and the Divine mercy, that there "may be in it a table in which the living bread which "came down from heaven is eaten by way of interces- "sion for the quick and dead."

It might have been supposed that the simple erection of churches, where both the quick and the dead were alike benefited, would have satisfied the credulous devotee. And so it would, had he been the only person interested. But the early canon introduced secular advantage along with spiritual benefit.

Canon, A.D. 1102.

"Churches shall not be consecrated till all necessaries "be provided for the priest and it." And to this day this law remains in force. Churches must be endowed with a suitable provision for the minister before the bishop consecrates. Once consecrated they inalienably belong to the church as a corporate body.

Confession.

A.D. 1261.

Confession was pronounced "a sacrament;" and "since it is like a plank offered us after shipwreck, and "the last refuge to them that are passing the waves "of this troublesome world, necessary for the salvation "of every sinner; we strictly forbid, under pain of ex- "communication, to hinder any one that desires it from "having this sacrament freely administered to him." It was never to be denied prisoners in gaol.

But this plank of salvation was, by the showing of a preceding canon, rendered extremely hazardous. "Let "him [the priest] inquire after usual sins, but not after "unusual, unless it be at a distance and indirectly, that "such as know may be put into a method of confessing, "and such as do not know may *not have an opportunity* "*of learning to sin,*" (A.D. 1236).

To trace the whole history of the confessional were to exhibit a deeply-stained moral enormity, and such as the bitterest enemy of the Christian religion would most eagerly pant to read.

The practical operation of the laws relative to confession, will be best illustrated by the following facts. The first is drawn from the evidence of Drs. Doyle and Magaurin (Roman Catholic bishops), before a committee of the House of Lords, in 1825:—

"*Right Rev. J. Doyle*, D.D., *examined.*

"Would a priest think himself justified, in case he received in confes- "sion a knowledge of an intended crime, to take any measure by which "he could prevent the execution of that crime?

"No; he cannot, more than the means he uses with the individuals "themselves.

"Could he not warn the person against whom the crime is intended to "be committed?

"He cannot.

"*Right Rev. James Magaurin*, D.D., *examined.*

"Are not the parties who commit a murder generally known to the "priests?

"I do not think they are.

"Supposing it were stated to him in confession, would the priest think "it consistent with his duty to divulge any part of a communication "which was made to him in confession?

"I do not think he would.

CHAP. IV. Sect. 6. Religious ceremonies.

" Might he not disclose so much of it as would prevent the perpe-
" tration of the crime, without committing the person who has made the
" confession ?

" He could not divulge any part of it."

The second is taken from a pamphlet written by a clergyman, the Rev. L. J. Nolan, who had been a popish priest. He was converted to the faith of the Gospel, and addressed several pamphlets to his Roman Catholic fellow-countrymen. He challenged inquiry, but no priest responded. He lived several years after his publications, but is now dead. His " third pam-
" phlet," published in Dublin in 1838, at pp. 23-25, contains this statement :—

" But, my friends, the most awful of all considerations is this,—that
" through the confessional I had been frequently apprised of intended
" assassinations and most diabolical conspiracies, and still I dared not
" give the slightest intimation to the marked-out victims of slaughter.
" But, though my heart now trembles at my recollection of the murderous
" acts, still my duty obliges me to proceed, and enumerate one or two
" instances of the cases alluded to.

" The first is the case of a person who was barbarously murdered, and
" with whose intended assassination I became acquainted at confession.
" One of the five conspirators (all of whom were sworn to commit the
" horrid deed) broached to me the bloody conspiracy in the confessional.
" I implored him to desist from his intention, but, alas, all advice was
" useless. No dissuasion could prevail, his determination was fixed, and
" his only reason for having disclosed the awful machination to his con-
" fessor seemed to have originated from a hope that his wicked design
" would be hallowed by his previous acknowledgment of it to a priest.
" Awful to relate ! yes, awful ! and the hand that now pens it shudders
" at the record it makes—a poor inoffensive man, the victim of slaughter,
" died a most cruel death by the hand of ruthless assassins. Oh, my
" dear Protestant countrymen, you will now naturally ask, whether am I
" or the perpetrators of the bloody deed most to be censured ?—I, who
" knew the murderers and the murdered previous to the act,—I, who had
" met the intended victim of slaughter in the public streets, but a short
" time antecedent to his death ?

Religious ceremonies.

" I must now proceed to the recital of another case.

" It is that of a female administering poison to her parent. Her first " attempt at parricide proved ineffectual, owing to an immediate retching " that seized the man after taking the draught. The perpetrator of this " foul deed came to confession and acknowledged her guilt; but circum- " stances proved that she only sought for priestly absolution to ease her " mind and prepare her for a speedy repetition of the heinous crime. " Again she attempted the act, and it proved successful. I was " called on to attend the dying parent. The unnatural throes and con- " vulsive agonies of the unfortunate man convinced me that the disease " was of no ordinary nature. The previous confession of his daughter, " who at the time made her appearance, rushed upon my mind, and sug- " gested that the parent was a second time poisoned. From what I had " known in the confessional, I could not even hint at the propriety of " sending for medical assistance, for the Romish doctrine impressed " inviolable secrecy on my lips, and prevented my giving the slightest " intimation of the malady, whilst the poor parent, unconscious of the " cause of his death, died in the most excruciating agonies. Oh, mon- " strous system of confession! Oh! thou iniquitous tribunal! Thou " cloaker of crimes—thou abettor of wickedness—thou brutal mur- " derer!"

Canon, A.D. 1322.

The disclosure of confessions is expressly forbidden. The canon says, " Let no priest, in any case, out of " hatred, anger, or fear even of death, discover the " confession of any man, by signs, nods, or words, " either in general or particularly, and if he be con- " victed of this, let him be degraded, without any hopes " of reconciliation."

Confirmation. Canon, A.D. 960.

Confirmation.—An early canon prescribed that " no one too long remain unbishoped"—unconfirmed.

A.D. 1281.

" We ordain that none be admitted to the sacrament " of the Lord's body and blood that is not confirmed, " except at the point of death."

A.D. 1322.

Confession was " to precede confirmation," to which " let him come fasting in honour to the sacrament. On

CHAP. IV. Sect. 6. Religious ceremonies.

"the third day after confirmation, the children were to "be carried to the church, that their foreheads may be "washed in the baptistry, by the priest's hand, in "honour to the chrism, and at the same time let the "fillets be there burned." "Let no child be held at "confirmation by its father or mother, that they may "know that a spiritual relation is contracted at this "sacrament as well as at baptism." This spiritual relation, we have shown, not only obstructed, but dissolved marriages contracted or consummated. (See chap. iii. sec. 7, "Degrees of Marriage.")

The question has recently been tried in the court of Queen's Bench, whether a clergyman could legally refuse to marry persons who had not been confirmed. By an omission in the plea, that non-confirmation did not disentitle to marriage, the question was quietly shirked. It may, however, admit of doubt, whether parties declaredly members of the church of England are not, by ecclesiastical law, bound to be confirmed prior to being married. This is one among many other instances in which canon law and common law stand opposed.

Communion.

COMMUNION.—By the term communion, we generally understand a commemoration of the Lord's death. By the church, a great deal more has been taught and enforced. In an early canon (A.D. 1138), framed at Westminster, it was styled, "The com-"munion of the body of Christ." By another canon, (A.D. 1236), the priest was to carry "the Lord's body" to the sick; "and let him" (the priest) "have a silver

" or tin vessel always to carry with him to the sick— " that is for giving the washings of his fingers to be " drunk after the taking of the eucharist." The bread might be eaten; but as to the cup—the washings of the priest's fingers were to suffice. For "the most worthy " sacrament of the eucharist" (A.D. 1279), "a taber- " nacle was to be made in every church in which the " Lord's body was to be laid up." "We decree, (it con- " tinues,) that this sacrament be carried with due " reverence to the sick, the priest having on his " surplice and stole, with a light in a lanthorn before " him, and a bell to excite the people to due reverence, " who are discreetly to be informed by the priest that " they prostrate themselves, or at least make humble " adoration, wheresoever *the King of Glory* is carried " under the cover of bread!"

Canons, A.D. 1281.

These religious fooleries were afterwards exceeded by the constitutions adopted at Lambeth, under Peckham, archbishop of Canterbury. "The holy council" was called "to correct transgressors of the canons, and to " obviate some innovations, or rather transgressions, " now exhaling from the infernal pit." Modest re- formers! How did they proceed? They say, "Here " let us begin our correction in the sacrament of our " Lord's body, which is a sacrament and a sacrifice of a " sacrament, sanctifying those who eat it, and a sacrifice " which by its oblation is profitable for all in whose " behalf it is made, as well the living as the dead."

Happily, though these absurdities were once law, they are now only records of the bygone corruption of the

CHAP. IV. Sect. 6.

Religious ceremonies. Statute, A.D. 1547.

church, and the mental prostration of the people. The 1st Edw. VI., cap. 1, (the very first act, therefore, that was passed in his reign,) declares "it most agreeable "to the first institution of the sacrament, and con- "formable to the practice of apostles and of the "primitive church, for 500 years after Christ's ascen- "sion, to administer it to all Christian people in both "kinds of bread and wine, and not of bread only; and "that the people should receive it with the priest, and "not by the priest alone." It proceeds, (sec. 7,) "Nor "shall the minister, without lawful cause, deny the "same to any person that will devoutly and humbly "desire it."

By the thirty-first of the articles of 1562, and now in force, the *theological* doctrine of sacramental satisfaction for sin is repudiated:—"Wherefore the sacrifices of "masses, in the which it was commonly said that the "priest did offer Christ for the quick and the dead, to "have remission of pain or guilt, were blasphemous "fables and dangerous deceits." And by the twenty-fifth article it is declared, "sacraments are tokens of Chris- "tian men's professions, and effectual signs of grace," and "were not ordained of Christ to be gazed upon, "or carried about."

Rites at burial.

BURIALS.—In a previous chapter (iii. p. 75) we have referred to interment as a *civil* privilege, we shall briefly advert to it now as a religious rite; than which, scarcely any solemnity can be rendered more impressive to the living. So it was designed by the incipient reformation, commenced in the time of Edw. VI. The

subjoined extracts from the Book of Common Prayer, sanctioned and enforced by the first Act of Uniformity, will illustrate this fact.

| In the First Prayer Book of Edward VI., A.D. 1549. | In the Second Prayer Book of Edward VI., A.D. 1552. | In the present Prayer Book. |
|---|---|---|
| "The priest, casting earth on the corpse, "shall say:— | "Then, while the "earth shall be cast "upon the body by "some standing by, "the priest shall "say:— | The same. |
| 1. "*I commend thy soul to God*, the "Father Almighty, and thy body to the "ground, earth to earth; ashes to ashes; "dust to dust; in sure and certain hope of "resurrection to eternal life, through our "Lord Jesus Christ, who shall change our "vile body," &c. | "Forasmuch as it "hath pleased Al- "mighty God of his "great mercy to take "unto himself the soul "of our dear brother "here departed, we "therefore commit his "body to the ground," &c. (as other side.) | The word "*the*" resurrection to eternal life — added. |
| 2. "*We commend into thy hands of* "*mercy*, the soul of this our brother de- "parted, beseeching thine infinite goodness "to give us grace to live in thy fear and "love, and to die in thy favour; that when "the judgment shall come, both this our "brother and we may be found acceptable "in thy sight, and receive that blessing "which thy well beloved Son shall then "pronounce to all that love and fear thee, "saying,—Come, ye blessed children of my "Father, receive the kingdom," &c. | Omitted. | Omitted. |
| 3. "Almighty God, we give thee hearty "thanks for this thy servant, whom thou "hast delivered from the miseries of this "wretched world, from the body of death "and all temptation, and, *as we trust*, hast "brought his soul, which he committed in- "to thy holy hands, into sure consolation | Omitted. | Omitted. |

| In the First Prayer Book of Edward VI., A.D. 1549. | In the Second Prayer Book of Edward VI., A.D. 1552. | In the present Prayer Book. |
|---|---|---|
| " and rest; grant, we beseech thee, that at " the day of judgment, his soul, and all the " souls of thy elect, may fully receive thy " promises, and be made *perfit* [perfect] " together, through the glorious resurrec- " tion of thy Son Jesus Christ our Lord." | Omitted. | Omitted. |
| 4. " O Lord, with whom do live the souls " of them that be dead, and in whom the " souls of them that be elected, after they " be delivered from the burden of the flesh, " be in joy and felicity; grant unto this thy " servant that the sins which he committed " in this world be not imputed to him, but " that he, escaping the gates of hell and " pains of eternal darkness, may ever dwell " in the region of light,—and when that " dreadful day of the general resurrection " shall come, make him to rise also with " the just and righteous, and receive this " body again to glory, set him on the right " hand of thy Son Jesus Christ, among thy " holy and elect, that then he may hear with " them those most sweet and comfortable " words—' Come to me,' " &c. | Omitted. | Omitted. |

## SECTION VII.—RELIGIOUS UNIFORMITY.

CHAP. IV. Sect. 7.

Senators have never attempted to coerce lawyers into one set of opinions, or physicians into one method of treating diseases. Had they done so once, they would not have had a second opportunity to expose themselves to the contempt of mankind.

Religion has, however, fared worse than law or medicine. In each of these sciences, evidence is the proof and experience the guide. But in religion, as

legally prescribed, creeds suppress evidence, and coerced uniformity prevents progression.

A preceding section (the 1st) has exhibited the church of Rome ever busy in carrying out its favourite pretension of unity. This section will show us the Protestant church outstepping its compeer in equally abortive efforts to enforce uniformity. "Outstepping "its compeer?" What says Burn? "In the more "early ages of the church, every bishop had the power "to form a liturgy for his own diocese; and if he kept "to the analogy of faith and doctrine, all circumstances "were left to his own discretion."* This fact receives confirmation from the Statute Book. The first Act of Uniformity was passed in the second year of Edw. VI., cap. 1, and states:— A.D. 1548.

"Where of *long time*, there hath been divers forms "of common prayer, commonly called the service of "the church, that is to say, the use of Sarum, of York, "of Bangor, and of Lincoln; and, besides the same, "*now of late, much more divers and sundry forms and* "*fashions have been used in the cathedral and parish* "*churches*, as well concerning the mattins and the "even song, as concerning the holy communion, with "divers and sundry rites and ceremonies."

It then goes on to pronounce a commendation upon the king, for having "borne with the frailty and weak-"ness of his subjects in that behalf," and for "abstaining "from punishment of those that have offended." And "to the intent that a uniform, quiet, and godly order

* Burn's Ecclesiastical Law (Public Worship).

CHAP. IV. Sect. 7.

Religious uniformity.

" should be had, the king appointed Cranmer, archbi-
" shop of Canterbury, with other bishops and learned
" men (having as well eye and respect to the Scripture
" as to the *usages in the primitive church*), who, together,
" should make one convenient and meet order of com-
" mon and open prayer; the which, at this time, *by*
" *the aid of the Holy Ghost*, with one uniform agree-
" ment, is of them concluded."

This book was thenceforth to be used in all churches and chapels. Those who had before offended were to be pardoned; except such as were then in the Tower and Fleet. "None other" book was to be used. Ministers disobeying were to be deprived of their livings, or imprisoned for life.

The impotence of legislation was never, perhaps, more expressively shown than in this attempt. That very book, which was said to have been "concluded by " the aid of the Holy Ghost," was three years afterwards called in, by authority of the 5th and 6th of Edw. VI., cap 1, "because there hath arisen, in the " use of the aforesaid Common Service, divers doubts, " rather by the curiosity of the ministers and mistakers, " than of any worthy cause."

Statute, A.D. 1551.

But need we be surprised that "ministers and mis-" takers" should have resisted the imposition of such a book? There were, at that time, vast numbers of men who, acting upon the conviction of their judgment, adhered to the Roman Catholic form of public worship; by the act they were compelled, every Lord's day, to utter this prayer:—"From all sedition and privy

" conspiracy, from *the tyranny of the bishop of Rome* " *and all his detestable enormities*, from all false doctrine " and heresy—good Lord deliver us."

Rome, however " detestable" in itself, was not likely to appear so to those who were obliged to pronounce against it an involuntary imprecation.

This phraseology, with other parts, were omitted in the second Prayer Book issued in Edward's time.

Before uniformity could be secured, it was necessary to enter upon the work of extirpation. Therefore the old Books of Common Prayer used in Henry's time, were (by the 3rd and 4th Edward VI., cap. 10) called in. All persons were to deliver them up to the civil authorities. Images were to be defaced and destroyed, except " the image or picture set or graven upon any " tomb of any dead person not reputed or taken for a " saint." At the latter end of the act, a proviso was inserted, by which persons might " retain the primers " set forth by Henry VIII., if the sentences of invoca- " tion, or prayer to saints, be clearly put out of the " same."

Whatever might have been the motives of the young king and of his parliament, it is evident that these intentions were self-imposed delusions. Men did not tamely submit. Quarrels, conflicts, and other proofs of dislike of the new rites and ceremonies constantly occurred. Churches and churchyards were often the scenes of these disorders. The very same session of parliament in which the corrected Book of Common Prayer received the sanction of law, the legislature passed

Statute, A.D. 1551.

CHAP. IV. Sect. 7.

Religious uniformity.

another act—viz., the 5th and 6th Edward VI., cap. 4, against "fighters and fraymakers in churches and "churchyards." Whoever was found guilty of quarrelling, chiding, or brawling in any church or churchyard, the bishop was to punish; if the offender were a clerk, by suspending him from his ministrations; or if a layman, by not allowing him to enter the church, and also by excommunicating him. If the person struck a blow, "or drew any weapon with the intent to strike," one of his ears was to be cut off; and if the offender "have none ears," then "he or they shall be burned "and marked in the cheek with an hot iron."

This act has been repealed, by the 9th Geo. IV., cap. 31, so far as relates to "striking with any *weapon*, "or drawing any weapon with an intent to strike;" and by 27th Geo. III., cap. 44, suits for "striking" must be commenced in the ecclesiastical court within eight months after the offence. But so long as the statutes remain a national record, the fact will be in evidence that this first attempt made by the state to *compel* uniformity of *worship*, was by violence resisted at the very time of worship.

We find, therefore, among eighty-six inquiries to be made at the Canterbury visitation, in the 2nd year of Edward VI., this item:— "Whether any have used "to commune, jangle, and talk in the time of the "common prayer, reading of the homily, preaching, "reading, or declaring of the Scriptures."*

It became an easy task to undo all that Edward VI.

* Strype's Memorials of Cranmer, vol. ii. p. 501.

had attempted. Immediately upon his death, the nation reverted to the old religious forms. Edward died 6th July, 1553; and by the end of the second session of Mary's first parliament, dissolved on the 6th of December following, all the acts of Edward relating to bishops and the liturgy were swept away. And by the 1st Mary *(sessio secunda)*, cap. 2, it was provided, that "all such Divine service and administra- Statute, A.D. 1553. "tion of sacraments as were most commonly used in "England in the last year of Henry VIII., shall be "used through the realm after the 20th Dec., 1553."

But vacillation was not yet perfected. Within five years and a half from this repeal of the professedly Protestant ritual, and the restoration of the Catholic formulary of public worship, another change took place. The 1st of Elizabeth, cap. 2, made void the Statute, A.D. 1558. repealing statute of Mary, which, it says, occasioned "the great decay of the due honour of God, and dis- "comfort to the professors of the truth of Christ's "religion."

We have here a singularly impressive condemnation of all attempts to impose a form of worship. Within a period of little more than eleven years, there were four sovereigns on the English throne; each one introduced many and highly-important changes in religious worship. But had Henry VIII. and his three children, Edward, Mary, and Elizabeth, as they one after the other ascended the seat of authority, commanded all persons to wear a dress of the same colour and shape; and had each sovereign chosen a contrast,

CHAP. IV. Sect. 7. Religious uniformity.

it would not have been a more expressive act of folly, than that which is supplied by the several statutes which commanded uniformity in religion. They are, in themselves, emphatic proofs of diversity.

One clause in this act of Elizabeth indicates the expectation that was formed of the result of the measure. The Catholic bishops had absented themselves from the House of Lords during the passing of the bill. They were, however, charged with carrying it into execution. But, as might be expected, it was foreseen that the church, as a body, would be inimical to the practical change. It was therefore provided, "that if there "shall happen any contempts or irreverence to be used "in the ceremonies or rites of the church, the queen, "by the advice of the commissioners or metropolitan, "may ordain and publish such further ceremonies or "rites as may be most for the advancement of God's "glory, the edifying of his church, and due reverence "of Christ's holy mysteries and sacraments." These powers, says Burn, "seem to have been lodged per-"sonally in the queen, as they were not extended to "her heirs and successors." *

The legislatures of Edward, Mary, and Elizabeth, paved the way for the multiplication of penal statutes. They offered the motive and the justification to non-conformity, by vain and infatuated attempts to coerce the clergy into an external oneness. That they were ruinous efforts, subsequent events proved. During the one hundred years that rolled away since the last

* Burn's Ecclesiastical Law (Public Worship), p. 243.

Religious uniformity.

referred to act had been passed, both the clergy and the laity took every opportunity of showing their utter aversion to a religion of "pains and penalties." These had, therefore, now either to be increased or surrendered. The church and the state chose the former. The *civil* rights of Englishmen were henceforward to be attacked. At first, severe laws crowded the Statute Book against Popish recusants.

Statute, A.D. 1661. Corporation Act.

At length came the Corporation Act. It is the 13th and 14th of Charles II., statute 1, cap. 1, which closed every office, in borough or corporate towns, against all persons "who did not receive the sacrament of the "Lord's supper, according to the rites of the church "of England." This was designed for the laity. It was followed by another attempt to enforce uniformity among the clergy. It is the 13th and 14th Charles II., cap. 4. This opened one of the most destructive fires that ever had been poured forth from the ecclesiastical artillery.

A.D. 1662.

The act came into force on Bartholomew's day, August, 1662. It states, "That notwithstanding" Elizabeth's Act of Uniformity "a great number of "people do schismatically refuse to come to their parish "church,—and many people, to the hazard of their "souls, have been led into factions and schisms." It goes on to state that the two houses of convocation had reviewed the former Prayer Book, and recommended some alterations and additions to be made therein. The new and amended book is then sanctioned and enforced upon the observance of the clergy, who now,

CHAP. IV. Sect. 7.

Religious uniformity.

for the first time, were required to declare not only that they would use the book, but also their unfeigned "assent and consent to all and everything contained "and prescribed" therein, (sect. 3.) If they neglected or refused to do so some Lord's day, on or before the feast of Bartholomew, 1662, when they were "openly and solemnly before the congregation to "declare such assent and consent," then, so far as their promotion was concerned, they should be considered "as dead." The consequence was, two thousand ministers vacated their churches.

By the 24th section of the act, "the several good laws "and statutes formerly made for the uniformity of "prayer, shall stand in full force and strength, and "shall be applied for the punishing of all offences con-"trary to the said laws," with relation to this new Prayer Book.

This was the last Act of Uniformity. It forms one of a code upon this subject. Lord Coke has asserted "Law to be the perfection of human reason;" not of one age, but of succeeding times. But if we are to judge of the "perfection" of a law, by the successful attainment of its declared purpose, we shall, looking at results, be justified in pronouncing the laws relative to uniformity, the climax of infatuated imbecility. The light of heaven does not more clearly reveal the varieties of creation, than do every-day occurrences in the social circle proclaim contrasts of opinions, principles, and aims of different parties in the church. Its ostensible law is, that all its members and ministers

shall act alike, because they are presumed to think, and, moreover, have sworn that they believe, alike. It is, however, notorious, that whatever may be the professions, and the oaths, and the sacraments accompanying those oaths, that they believe and will use but one external form of worship, the clergy are among themselves at antipodes of religious faith. Recent events prove this fact.

The consequences of constrained uniformity are too varied and complex to allow a full elucidation in these pages. Without going into the detail of the practical and multiform mischiefs, we advert to one of gigantic magnitude. It is this. The human mind is in imminent danger of repelling religion, when thus presented. Would not the palate nauseate the richest food, if but one viand were constantly eaten? Would not the ear resist the sweetest sounds, if they were the only accents to which it was allowed to listen? Would not intellect itself turn away from the sublimest portions of Divine revelation, if only a certain number of words were always to be read?

The truth is, the Author of our existence has given us two volumes, His Word and His Works. Both are replete with variety, and adapted to meet the every phase that human aspirations after God may assume. "The Teacher that came from God," has instructed us how to use both these volumes. His example has but to be followed, and religion, relieved from its present enfeebling monotony, will spring forth with invigorating power.

CHAP. IV. Sect. 7.

Religious uniformity.

Among no persons might this fact be evinced more delightfully, than among those who use prepared forms of devotion. For it must be remembered, that a liturgical mode of worship does not necessarily include a dead monotony of enforced service. Ministers might be allowed a discretionary use; or an arrangement of devotional exercises might be made, similar to that which obtains as to the public reading of the Scriptures. There might be variety and yet oneness. This principle law has itself, at length, acknowledged, by having given up all its previous attempts to enforce uniformity. The 1st of William and Mary, cap. 18, not only took away the penalty which before had attached to nonconformity, but virtually put an end to the conflict which, during one thousand years, (calculating from A.D. 669, when, under Theodore, the British churches were, first brought to submit to the authority of the Pope,) had been kept up between ecclesiastical despotism and religious liberty. Ten centuries were required to establish it as a *legal* truth, that worship is an act of mind, and cannot be created by force! And the same length of time would have been requisite to establish it as a *legal* truth, that two and three are equal to five, had mathematics been taught by force of law.*

Statute, A.D. 1668.

The fact is, theologians have been guilty of greater absurdities than any other one set of professional men.

* See Appendix, as to occasional conformity.

Religion, as given us by God, is pre-eminently a science of evidence. That which it cannot prove, it does not enforce. It has as much, perhaps more, moral evidence than any other science. But men, professing profound attachment to its requirements, have lost themselves in the mazes of fraud or force. The history of religious intolerance demonstrates, that just in proportion as its many advocates have themselves mistaken the legitimate authority of Divine truth, viz., that of persuasion, in that proportion have they loaded the Statute Book with lamentable proofs of intellectual folly, impotent despotism, and religious guilt.

Perhaps the day may come, when even Denominational partisanship will not be chargeable, as it now, in very many instances, unhappily is, with imposing *sectarian*, in the place of *legal* coercion. Christianity—bold, broad, beauteous Christianity—is still enthralled. It matters not, whether the eagle be confined to a throne of ivory by chains of gold, or linked to a dungeon by fetters of iron, it is alike prevented taking its native heavenward flight. Christians, in their individual habits of thought and of conduct, must learn first to emancipate their own minds from the voluntary thraldom they have so long and unconsciously endured, before Christianity will be traced, in the solidity of a divinely-laid foundation, or admired for the beauty of its divinely-raised superstructure.

## SECTION VIII.—RELIGIOUS EXACTIONS.

CHAP. IV. Sect. 8.

Originally, every money payment to the church was free. Neither the amount nor the obligation were prescribed by law. There are not, however, now, any original customary offerings, which may not be enforced; some in the ecclesiastical, and others in the common law courts. Custom has created law. Every statute passed upon this subject is based upon custom. The first statute which rendered offerings compulsory, is the 13th Edward I., cap. 1. It gives the "parson the right to demand oblations due and accus- "tomed." (Sec. 3.) By this means, offerings are now legally considered compositions; and are to be sued for in the spiritual court. The 9th of Edward II., cap. 1, mentions "oblations, obventions, mortuaries, and re- "demption of penance." The 2nd and 3rd of Edward VI., cap. 13, sec. 10, required such "offerings to be "paid at the four offering days, as had, within the space "of four years last past, been used and accustomed for "the payment of the same."

Statute, A.D. 1285

A.D. 1315.

A.D. 1549.

We shall find, however, a singular anomaly in this matter. The *ecclesiastical* law forbids a stipulated price being demanded for spiritual offices. "We charge "that no *price* be demanded for chrism, oil, baptism, "visiting or anointing the sick, for the communion of "the body of Christ, or for burial."

Canons, A.D. 1126.

A.D. 1138. The canon of this year repeated the former injunc-

tion ; and also added "the espousals of women," among the acts for which a price was not to be demanded. The prohibition was afterwards again enlarged:—"The "holy synod detests simonaical heresy; and ordains "that nothing be demanded for *orders*, chrism, bap- "tism, extreme unction, burial, communion, nor the "*dedication of a church*, but that what is freely received "be freely given. Let the offender be anathema." A.D. 1175.

But though a price might not be charged, it was assumed that an offering would be made. The amount of these free gifts appears from another canon, which complained that "some sons of malediction endeavour "to *restrain* the devotions of the people at solemnization "of marriage, purification of women, offices for the "dead, and upon other occasions (where God in the "persons of his ministers uses to be honoured with the "oblations of his people) *to a penny, or a small pittance* "*of an offering*." "Every such instigator and hinderer, "by whose wicked contrivances any accustomed honour "or profit is withdrawn from rectors or vicars," were "involved in the sentence of the greater excommunica- "tion, and we reserve the absolution of them, till by "their counter-endeavours the devotion of the people "be effectually restored." A.D. 1328.

It is evident, from the foregoing denunciation, that though the church refused to *sell* her spiritual offices, she yet deigned to exact a pecuniary acknowledgment for the administration.

Thirteen years from the date of the last mentioned canon, the church called in the power of the state. Statute, A.D. 1341.

CHAP. IV. Sect. 8. Religious Exactions.

By the 15th Edward III., cap. 6, (styled "An Act *touching money to be taken by priests,*") they were empowered to demand money, for "redemption of "corporal penance, probates, the solemnity of marriage, "and for other things touching the jurisdiction of holy "church."

In that age, every act of the priesthood touching religious offices was understood to be included in the phrase "*jurisdiction* of holy church." It is true, a part of that jurisdiction relates to the "punishment of sin," (see page 172,) "for which money is not demanded." But though the spiritual courts could not impose a fine, that being a *civil* penalty, they might and did inflict a more grievous evil, in the form of costs. Then as now, these prove the cause of certain ruin in many cases.

The denunciation by the canon of 1328, shows in what way the people then sought to cheat the priest. In modern days, some priests seek to evade the people. The facts are as follow.

When G. A. Vernon, Esq., the commissary and vicar-general of the archbishop of York, was examined before the ecclesiastical commission in 1830, he was asked, "Do you consider that you have any jurisdiction "to enforce the payment of fees for burials, christenings, "marriages, or any other service of that description?" And his reply was,—"I should think not."

Another witness supplies the information as to the method by which these payments are obtained. Dr. Goddard, the archdeacon of Lincoln, told the com-

missioners that "fees for baptisms were asked upon "*the pretence of opening the church.*" *

*Burial Fees.*— Although the canons prohibited a *price* being *demanded*, they established a certain kind of proprietary interest of every parish priest in his parishioners, living or dead. Thus the ecclesiastical law says, "Corpses shall not be carried out of their "parishes to be buried, so that the priest of the parish "*lose his just dues.*" Burial fees. Canons, A.D. 1102.

*Mortuaries* partake of this character of proprietary interest. They are a species of ecclesiastical feudal tenure. In this light, the church itself speaks of them. They were called the "principal legacy," "which first "was voluntary and bequeathed by will, and then gra- "dually grew into a custom."† Respecting it, the canon says, "Let the custom of the province, with "the possession of the church, (*i.e.*, the then method "of paying it,) be observed." But as disputes often arose, they were sought to be allayed both by statute and canon law. The statute is the 13th Edward I., cap. 1, and gave to prelates power to punish offenders against "the parson who demanded mortuaries in places "where they have been accustomed to be given." The canon also says, "If the deceased had three animals "or more, of any sort, the best being reserved to the "Lord, to whom it is due, (known by the name of "heriot,) the next best shall be reserved for the church, Mortuaries. Canons, A.D. 1250. Statute, A.D. 1285. A.D. 1367.

* Report of Ecclesiastical Commission (1830), pp. 130 and 141 of the Appendix.

† Johnson's Ecclesiastical Laws (1250).

CHAP. IV. Sect. 8.

Religious exactions.

" (from which he received the sacraments while he was " alive). If there were but two animals among the " chattels of the deceased, the church in mercy remits " all actions on account of a mortuary. If the wife " survives her husband one year, and, as his widow, " continues to govern the family, let her be obliged to a " mortuary according to the form above written."

The evil remained unabated; complaints appear to have been repeated and loud. The laws made upon the subject exhibit painful facts. The 21st Henry VIII., cap. 6, says, " Mortuaries, otherwise called corse " presents, for the value of them, is thought over exces- " sive to the poor people and other persons; as also " that they have been levied for such as at the time of " their death have had no property in any goods or " chattels, and many times for travelling and wayfaring " men in the places where they have fortuned to die."

Statute, A.D. 1530.

It then forbids mortuaries to be taken, if the person died possessed of goods under the value of ten marks, (£6. 13s. 4d.) They are due "only in such places " where they had been accustomed; and but one mor- " tuary for one place. Over ten marks, clearly above the " debts paid, and under thirty pounds, a mortuary of three " shillings and fourpence, and no more. Over thirty " pounds and under forty pounds, after debts being paid, " six shillings and eightpence, and no more. Above forty " pounds, to any sum, whatsoever it be, clearly above " his debts paid, no more than ten shillings shall be " paid or demanded." By this statute, mortuaries are not demandable for any child, or person not keeping a

house, or for a wayfaring man, or a woman "covert "baron." Wales is exempt, unless the custom had obtained in any place in that part of the realm.

But notwithstanding this act, the archdeaconry of Richmond, in Yorkshire, within the diocesan court of Chester, and province of York, continued to exact higher mortuaries, by virtue of a prescriptive right, which the former statute did not destroy. The 26th of Henry VIII., cap. 15, says, "Divers and many" in this archdeaconry, "had for a long time been sore and "grievously exacted and impoverished by the parsons, "vicars, and others, taking of every person *when he* "*dieth*, in the name of a pension, sometimes the ninth "part of all his goods, and sometimes the third part." It then regulates the payments, according to the scale in the first mentioned act.

In addition to mortuaries, fees are *now* recoverable at common law, by rectors or vicars, for every interment. By a fiction of law, the freehold of the churchyard lies in the parson. For breaking ground in that freehold he is entitled to his fee. The amount is fixed by the custom of each parish.

Now that difficulties so frequently occur as to interring the unbaptised, (and if the clergy were strict in their compliance with the rubric, they would also refuse the offices of the church, at the funeral of those who had not partaken of the sacrament at Easter and Christmas, according to the rites of the church of England,) it seems but equitable, that the friends of parties so refused interment in churchyards, should

CHAP. IV. Sect. 8.

Religious exactions.

either be excused all mortuaries and other payments; or that the legislature should enforce the constitutional right of burial for all persons, and under all circumstances; or allow accredited ministers of every section of the Christian church to inter, in the churchyard, their own members or friends.

Sacramental fees, or Easter offerings.

The assumption by the church, as also by the common law of the land, is, that all persons above the age of sixteen years are communicants. As such, they are liable to be proceeded against, if they pay not their quota of the cost of bread and wine. These go under the designation of Easter offerings. The only persons exempt, are the citizens of London, unless "the wife, "children, servant, or others of the family of any "householder take their rites of the church at Easter, "when the householder shall pay twopence for the four "offering days yearly."—37th Henry VIII., cap. 12, sec. 12.

In all these cases, the ecclesiastical courts proceed by their own laws. The statute of Edward I., (A.D. 1285,) withdrew from the temporal courts the power of prohibition, in every instance of non-payment. The cause would proceed *pro salutæ animæ,* and ostensibly seek "the correction of manners."

Church rates.

From a very early period, churches were deemed public edifices. They served the double purpose of religious worship and civil protection. As such, they were to be sustained by the parishioners. The first

Canon, A.D. 1018.

canon passed on this subject says, "All people ought, "of right, to assist in repairing the church." Ques-

tions, however, arose, as to what ornaments, as well as what repairs, were to be provided by the parish. Another canon, therefore, prescribed that the following things the people should supply:—"The principal A.D. 1250. "mass vestment of the church—the alb—the amyt— "the stole—the maniple—the girdle, with three towels "and corporals, with other *decent vestments* for the "deacon, with a *silk cope* for the principal festivals—a "cross for processions, and another lesser cross for the "dead—a *bier for the dead*—a vessel for holy water," and other Romish ceremonies—"three *surplices*, *great* "*bells with their ropes*," together with "images" of different kinds.

By the same canon, "the chancel, with the repara- "tion thereof, as the walls and roofs, and glass "windows, with desks and benches," are said to "belong to the rectors or vicars;" "and let them "know that they may be compelled to these and other "things, not written in this book, by the ordinaries "(bishops) of the places, according to this consti- "tution."

Many of the above articles may now be refused, as they might be said to be devoted to those "superstitious "uses," which by law are prohibited. The principle of the law, however, remains untouched, and unrepealed. Had it been that canon law only enforced their being furnished, it would have been obligatory upon parishioners to furnish the supply, seeing that these and other canons fall under the description given of them in the preamble of the 21st Henry VIII., cap.

CHAP. IV. Sect. 8.

Religious exactions.

21, viz., that by "the sufferance of the monarchs, the "people have taken, at their free liberty, and have "bound themselves by long use and custom to the "observance of the same."

Statute, A.D. 1285.

But the case is still more strongly made out by the unrepealed statute of the 13th of Edward I., by which a prohibition from the king's courts will not lie against the ecclesiastical courts, if they proceed "to punish for "leaving the churchyard unclosed, or the church un-"covered, or not conveniently decked." In this act, the original terms employed are very comprehensive. They are "*pro ecclesia non facta; cæmeterio non clauso; ecclesia discoopta, vel non decenter ornata.*"

With these laws in force, it is in vain parishioners seek to get rid of church rates by a mere vote at a parish vestry. All they can do, is to prevent retrospective rates; or the secret insertion of charges not legitimately within the intention of the law. Until it is repealed, the "courts christian" may bring up the power of the common law courts, to enforce both the making and the payment of the impost.* It remains to be seen, whether a minority of parishioners, aided by the churchwardens, may not impose a rate upon and against the consent of the majority. This question is now *sub judice* in the House of Lords.

Oblations and obventions.

Among other sources of revenue, which the officers

* In 1843, a bill was brought into parliament by the then government respecting ecclesiastical courts, in which it was proposed to repeal so much of the above statute of Edward I., as "related to spiritual persons "suing for tithes, mortuaries, and pensions in the spiritual courts." But it left the question of church rates untouched.

of the church may demand and recover by law, are oblations and obventions. This latter word includes the former; under the two phrases are comprehended the small customary sums paid by every person when he receives the Lord's supper at Easter; and the customary payment for marriages, christenings, churchings, and burials. By the 2nd and 3rd Edw. VI., cap. 13, sec. 10, "every person shall pay the parson, vicar, "proprietor, or their deputies," if for four years before the time of passing the act they had been accustomed to pay these various offerings. This act, by referring to "the custom" of the parish, somewhat abridged the law, as it had stood from the time of the 13th Edw. I., which rendered it imperative upon all persons to pay the "accustomed" demand, without restricting it to four years' previous custom.

These compulsory "offerings" are, in many instances, a fruitful source of personal and parochial strife. In 1822, a demand of ten pence was made upon —— Watson, for an Easter offering. He having refused payment, was cited into the bishop's court of Durham; and though the plaintiff eventually lost his cause, the defendant had to pay (it is said) £1,178 12s. 1d. costs and other expenses.

## SECTION IX.—RELIGIOUS DISCIPLINE.

As to the laity.

The first *legal* form, relating to discipline over the LAITY, was established and confirmed by the constitution of ecclesiastical courts, in the time of William the Conqueror. The terms employed in the charter which

CHAP. IV. Sect. 9.

Religious discipline.

gave to those courts a separate and independent order of proceeding, are emphatic and comprehensive:— "*Causam* quæ ad *regimen animarum pertinet*." This "government of souls," was construed to mean every action, and to include every person in the state. "Every "one has a soul," exclaimed the priesthood; whatever he or she performs, indicates the moral condition of the soul; we therefore, *pro salutæ animæ*, claim the power "of correction of manners."

"The *punishment of sin*" pertains to ecclesiastical law. The state has assigned to the church this power.

Statute, A.D. 1285.

The 13th Edw. I. gives the bishops authority "to hold "plea in court christian of such things as be mere "spiritual, that is, to wit, of penance enjoined for "deadly sin, as fornication, adultery, and such like," and likewise "for breaking an oath."

By virtue of these powers, the court of the archbishop of York, in February, 1827, imprisoned a parish clerk four months in York Castle, for "immoral "and profligate life." Another court (Lincoln), in 1828, imprisoned a man and a woman, guilty of "for- "nication," one year and eight months.

The officers charged with this correction of manners, are the chancellors, archdeacons, or commissaries. The patent granted by the bishop of Norwich to the Rev. C. N. Wodehouse, describes him "corrector-general." That given to the chancellor, the Rev. William Yonge, clerk, gives him authority "to punish as well the "clergy as laity, of both sexes, whatever dignity or "honour they may enjoy; and to correct, punish, and

" reprove, as often as it shall seem expedient, according " to the canons of the church, and the laws and statutes " of this realm, whatever shall be found out and de- " tected; and to assign, inflict and impose upon the " delinquents, canonical and salutary penances, in pro- " portion to the quality and degree of their crimes, " excesses, faults and demerits, according to the sound " learning and discretion given him by the Lord." [This instrument bears date 21st November, 1814, and was ordered by the House of Commons to be printed, 26th March, 1830.] These powers are sufficient to alarm. They apply, however, only to members of the church of England. The Toleration Act did not, it is true, expressly relieve dissenters from ecclesiastical discipline. It only freed them from certain penalties to which otherwise they would have been liable, for nonconformity to public worship. That law was subsequently enlarged, by the 52nd Geo. III., cap. 155, and by the 13th section, " the *jurisdiction* " (*i.e.*, judicial process) " of the archbishops or bishops, or other " person exercising lawful authority in the church of " the United Kingdom," is declared to extend " OVER " THE SAID CHURCH, according to the rules and disci- " pline of the same, and the laws and statutes of the " realm," and no further.

Statute A.D. 1812.

Still the question may be asked, Can *judicial* powers put down or punish " deadly sins?" The reply may be given in the words of the apostle John, 1st Epistle, v. 16, " There is a sin unto death," or a deadly sin, " I " do not say he shall *pray* for it." The force of this

CHAP. IV. Sect. 9.

Religious discipline.

passage has been impaired, and the true meaning kept back, by retaining the same word "pray," in the latter as well as in the former clause of the verse. In the former clause, an offending brother is to be "*prayed for*," αιτεω, to beg, beseech. In the latter clause, the word is also translated *pray:* but another word is employed in the original. It is ειρω, to bind, order, command. The Vulgate reads it "ut roget "quis," *rogo*, to bring in a bill, to propose a law in the senate. This very word is so used in the parliamentary roll of A.D. 1235, in 20th Henry III.

The apostle, therefore, seems clearly to distinguish between spiritual correction, by prayer, which he says shall restore the offender, and judicial processes, which he interdicts. The word used in the latter clause of this passage is the same as that used by the evangelist John, i. 19, when he says "the Jews sent from "Jerusalem priests and Levites," *i.e.*, the officers of the Jewish consistory court, to "interrogate," ερωτησωσίν, "demand, judicially to inquire" of John, "Who art "thou?"

To return to the *legal* question. There are two modes by which the clergy might seem to have power to enforce discipline over the laity. One is provided in the Book of Common Prayer, and respects the administration of the Lord's supper. Thus, "an open and notorious evil liver" the minister may prohibit from coming to the table. But then, the person so prohibited must, by *a previous process of law*, be pronounced guilty of some spiritual offence. With-

out such legal process, the minister may himself be punished, both by the ecclesiastical and civil courts, for refusing to admit to the table.

The other mode of proceeding against offenders is to refuse Christian burial. A variety of causes justify this refusal. (See section xiv., chap. iii., p. 75.) But here, again, a course of law must be resorted to, either to compel the minister to bury, or to punish him for refusing. The reason for all this is obvious. The authority of law supersedes all other influence. But in the case of voluntary membership of other churches, each individual becomes bound by the rules of the associated body, and so long as these are adhered to, the common law holds the administrator harmless.

As to PRIESTS. It must not be overlooked, that the bishops had once awful power in their hands, which at pleasure they could use against their clergy. For adultery and other sins, "archbishops, bishops, and "other ordinaries, having episcopal jurisdiction, could "punish and chastise priests, clerks, and religious men, "as were convicted afore them by the law of the church, "by committing them to prison for such time as they "thought convenient."—1st Henry VII., cap. 4. And the bishops were by the act "discharged of all actions "for false imprisonment." The 3rd and 4th Vict., cap. 86, (A.D. 1840,) repealed this statute, and placed the power in more than one person's hands. By this act the bishop in whose diocese "any clerk in holy "orders is charged with any offence against the laws "ecclesiastical, or concerning whom there may exist

As to Priests.

Statute, A.D. 1485.

Statute, A.D. 1840.

CHAP. IV. Sect. 9.

Religious discipline.

"any scandal or evil report," may appoint a commission of five persons, "to inquire as to the grounds "of such charge or report," and whether there be sufficient *primâ facie* reason to institute further proceedings. If they determine there is, the bishop may, with the consent of both parties, "pronounce such "sentence as he shall think fit, not exceeding the "sentence which might be pronounced in due course "of law;" or he may proceed to trial, according to the ecclesiastical law, if assisted by three assessors; of whom one shall be his vicar-general; or one archdeacon, or rural dean. Or the bishop may at once carry the cause into the ecclesiastical court; from which an appeal lies to the privy council. The *arch*bishop may also cite into his court, pursuant to the 23rd Henry VIII., cap. 9, sec. 4, any person or persons in "any bishop's diocese for causes of heresy, if the bishop "consent, or doe not his duty in punishment of the "same."

Another provision of the act of Victoria is remarkable. The 25th section states "that nothing therein contained "shall be construed to affect any authority over the "clergy of their respective provinces or dioceses, which "the archbishops or bishops of England and *Wales*, "(Ireland is excluded,) *may now, according to law, exer-* "*cise personally, and without process in court.*" As to this last power, the 54th canon (A.D. 1603) says, archbishops or bishops may "admonish any man licensed to preach, if "he refuse to conform himself to the laws, ordinances, "and rites ecclesiastical, to submit himself to the use

"and due exercise of the same. And if after such "admonition he do not conform himself within the "space of one month, we determine that the licence of "every such preacher shall be utterly void." And by the 9th Edward II., (1315,) cap. 13, the "bishop is the "sole judge of the ability of a parson presented unto a "benefice of the church." So that after a minister shall have subscribed the Thirty-nine Articles, taken the oaths, preached in one church, it may be, for many years, if presented to another benefice, he may be again subject "to episcopal examination." In Mr. Gorham's case, this actually took place, and occasioned all the legal and theological agitation incident to the refusal of Dr. Philpotts, the diocesan, to induct him to the crown living. Withdrawal of licence to preach, and refusal to institute to a living, are the two powers a bishop may constantly employ.

*Defamation of character* is punishable in the spiritual court. It is assigned them, by the 9th Edward II., and has proved a fruitful source of vexation; and, in many instances, of the ruin of parties. (See *Report of Ecclesiastical Commission*, p. 569, App.)

*Excommunication* was, originally, one of the most awful disciplinary powers exercised by the church, or sanctioned by the state. The lesser excommunication denied the excommunicated person ingress into the church; the greater, involved imprisonment and outlawry. By the 53rd George III., cap. 127, "no civil "penalty or incapacity whatever is incurred, save "imprisonment for six months."

# CHAPTER V.

## CHURCH LAWS RELATING TO THINGS MIXED; OR PARTLY SECULAR AND PARTLY SPIRITUAL.

1. Relative position of church and state.

§ 2. Legal status of the clergy.
Bishops as barons—Exceptions.
Clergy, as a distinct and principal estate.

§ 3. Supremacy.
Powers (spiritual and temporal) conferred upon the sovereign as head of the church.

§ 4. Appointment of bishops.
By the clergy and people.
By the crown.

§ 5. Episcopal sees—
Creation of, by the crown.

§ 6. Church property—
Derived from gifts.
Mis-appropriation by the church.
Re-appropriation by the state as trust property, subject to existing laws.

§ 7. Convocation.

§ 8. Benefices—Simony.

§ 9. Ecclesiastical jurisdiction, derived from the crown.
Church officers; *e.g.*, judges, advocates, archdeacons, &c.

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CHAP. V. It has been shown (ch. iv. sec. 2, page 85) that the ecclesiastical body was the first to make a *formal* declaration of its incorporation with monarchical power. This amalgamation had existed antecedently, but at the time

specified it took what may be called a *legal* form. As a consequence of this union, we are obliged to regard the church sometimes as a spiritual, at other times as a temporal organisation; and it not infrequently happens that it is seen in a mixed character, *i.e.*, neither wholly religious nor entirely secular, but as sustaining a combination of both elements. The only question with which we have to do, is to state the law upon the several matters in which the incorporation exists. The great principle upon which the whole subject turns, will be seen in the following sections.

## SECTION I.—THE RELATIVE POSITION OF CHURCH AND STATE.

Ever since the two powers were incorporated, there have been conflicts between them; the one to accroach to itself supreme authority—the other, to retain its legitimate control. The history of these conflicts need not here be repeated, except so far, indeed, as to refer to the fact, that in no instance have these contentions been more clearly proved than in the unceasing opposition existing between ecclesiastical and civil jurisprudence.

The spiritual courts (the centre of church power) have always been the objects of dislike to king's courts. But, independent of this consideration, the state has, for more than eight centuries, strove to drive and to restrain the spiritualty (as Henry VIII. called the church) within the limits of spiritual authority. Civil matters have, one after the

CHAP. V. Sect. 1.

Relative position of church and state.

other, been withdrawn from its grasp (see ch. iii. sec. 1 to 12); and although it is true the mightiest of these usurpations remain, to mingle with other wrecks of the papal domination (see "Wills," "Marriages," sec. 7 and 8), still even these remnants of the moral despoiler of Christianity must, eventually, melt away before the rising influence of an enlarged acquaintedness with the whole subject.

In order to form a correct opinion upon this matter, it is not necessary to refer to ancient proceedings or laws. Modern legislation will sufficiently explain the relation the church bears in or to the state. The two parties have each authoritatively spoken upon this point. For instance—

The *state* has embodied its decisions in various statutes. One is the 24th Henry VIII., cap. 12, and declares "the English church sufficient and meet of itself, "without the intermeddling of any exterior person or "persons, to determine all doubts and to administer all "such offices and duties as to their rooms spiritual doth "appertain." This self-government may, in strict legal construction of the act, be restricted to mean independence of papal domination. But, if competent to govern itself against this greatest tyranny, *à fortiori*, the church is equally competent to govern itself, without the "intermeddling of *any* exterior person or persons "whatever."

The *church* has, with equal explicitness, defined the position it yields to the state. Thus, the 37th article (1562 and 1571), under the head of "civil magistrates," says:—

Relative position of church and state.

"The queen's majesty hath the chief power in this "realm of England, and other her dominions, unto "whom the chief government of all estates of this "realm, whether they be ecclesiastical or civil, in all "causes doth appertain; and is not, nor ought to be, "subject to any foreign jurisdiction." Then follows an expletive.

"When we attribute to the queen's majesty the chief "government, by which titles we understand the minds "of some slanderous folks to be offended, we give not "to our princes the ministering either of God's Word "or of the sacraments; the which thing the injunctions "also lately set forth by Elizabeth, our queen, do most "plainly testify; but that only prerogative, which we "see to have been given always to all godly princes, in "Holy Scriptures, by God himself; that is, that they "should rule all estates and degrees committed to "their charge by God, whether they be ecclesiastical or "temporal, and restrain, with the civil sword, the "stubborn and evil doers."

The canons of 1603, speaking of the king's supremacy, after renouncing that of all foreign powers, says, "The king's power is the highest power under God, "to whom all men do by God's laws owe most loyalty "and obedience,"—(1st.) Another (the 3rd) says, "The church of England is a true and apostolical "church, *by law established under the king's majesty;*" *i.e.*, its origin is apostolic; its position, legal.

## SECTION II.—LEGAL STATUS OF THE CLERGY.

CHAP. V. Sect. 2.

As an integral part of the state, the church has had assigned to it a distinct and correlative position in the state. The 8th of Elizabeth, cap. 1, (A.D. 1558,) declares "the clergy one of the greatest states of this "realm." Laws of an earlier date, still more definitively defined the position of certain ecclesiastics. In 1285, the 13th of Edw. I., cap. 42, declared "bishops," holders of "a barony." In 1350, the 25th Edw. III., cap. 6, calls them "peers of the realm." As such, *English* bishops have always claimed, *ex officio*, a right to sit and vote in the House of Lords. This claim does not, therefore, extend to Irish, Scotch, or colonial bishops. And, even in respect of the English episcopate, a most remarkable change took place in 1847.

The 10th and 11th Vict., cap. 108, founded the new see of Manchester; but it enacted, "that the number "of lords spiritual shall not be increased" by such creation of the bishopric; and "whenever there shall be "a vacancy among the lords spiritual by the avoidance "of any one of the sees of Canterbury, York, London, "Durham, or Winchester, or of any other see which "shall be filled by the translation thereto, from any "other see, of a bishop at that time actually sitting as "a lord of parliament, such vacancy shall be supplied "by the bishop who shall be elected to the same see; "but if such vacancy shall be caused by avoidance of "any other see in England or Wales, it shall be sup-

" plied by that bishop who shall not have previously " become entitled to the writ of summons; and no " bishop elected to any see, (except the above five,) " shall be entitled to such writ of summons, unless in " the order and conditions above prescribed."

Thus a prescriptive right, that had stretched over a period of more than five hundred and fifty years, was set aside, and a new principle established, viz., that there is no necessary connection between a bishopric and a barony.

The relative position of church and state may be further ascertained by a slight reference to some of the ancient and unrepealed laws upon the matter. Thus, the 25th Edw. III., statute 6, calls it, " the *holy church* " *of the realm*." The object for which it was founded is also defined, viz., " to inform the people of the law " of God; to make hospitalities, alms, and other works " of charity, in the places where the churches were " founded, for the souls of the founders, their heirs, and " all Christians."

The 26th Henry VIII., cap. 1, designates the church " Anglicana Ecclesia," the authority of which shall be exercised by the king, his heirs and successors, " most " to the pleasure of Almighty God, the increase of " virtue in Christ's religion, and the conservation of the " peace, unity, and tranquillity of the realm."

The 27th Henry VIII., cap. 20, styles it, " his (the " king's) church of England;" and by the 31st of the same reign, cap. 14, it is called, " the king's English " church."

CHAP. V. Sect. 2.

Legal status of the clergy.

Of this church, the chief *spiritual* authority is the archbishop of Canterbury; who, by the 1st of Elizabeth, cap. 2, sec. 25, is "*metropolitan of this realm.*" In other words, wherever throughout the British empire the authority of the crown is exercised, there, "*pari passu*," the ecclesiastical jurisdiction of the archbishop is also to be acknowledged.

## SECTION III.—THE SUPREMACY.

The monarchs of this country have always stood at the head of the ecclesiastical body. This they claim and exercise by prescriptive right. It has been shown that, in the Anglo-Saxon times, the king met the prelates in those assemblies, which were called to adopt laws for the regulation of the whole community. (See chap. iv., sec. 2.)

The regal prerogative of supremacy has never been surrendered—not even when England was under the *spiritual* domination of a foreign pontiff; and, therefore, the 25th of Edward III., in A.D. 1350, charged "the "bishop of Rome with accroaching to him the seig- "niorities of the possessions and benefices of the church "of England, as if *he* had been patron or advowee." In opposition to whom, it declared (sec. 4) "the king "advowee paramount immediate." The rights incident to which it is asserted "the king and his proge- "nitors had, *before* that free election was granted," and therefore, that "all prelates, and other people of holy

"church," hold their benefices as "king's gifts." (Sec. 2 and 3.)

The independence of the crown was further declared by the 24th Henry VIII., cap 12, which says, "Divers "authentic histories and chronicles express that Eng- "land is an empire, having one supreme head and "king, unto whom a body politic, divided by the names "of spiritualty and temporalty, compact of all sorts and "degrees of people, have been bounden to bear, *next to* "*God*, a natural and humble obedience," "he (*i.e.*, the "king) being furnished with plenary, whole and entire "power, prerogative, and jurisdiction, *without restraint* "*or provocation to any foreign princes or potentates of* "*the world.*"

It goes on to declare that "Edward I., Edward III., "Richard II., Henry IV., and other kings, made "sundry laws for the entire and sure conservation of "the prerogatives of the imperial crown, and of the "jurisdiction spiritual and temporal of the same, to "keep it from the annoyance, as well of the see "of Rome, as from the authority of other foreign "potentates."

The succeeding year brought out another act, (25th Henry VIII., cap. 21,) in which "the bishop of Rome" is charged with "pretending that he hath power to "dispense with all human laws of all realms, in all "causes which he called spiritual; which matter hath "been usurped by him and his predecessors, in great "derogation of the imperial crown, contrary to right "and conscience."

CHAP. V. Sect. 3.

The supremacy.

These several acts, the reader will bear in mind, were passed before Henry VIII. was by statute styled "supreme head of the church."

The monarch is recognised by common law, as "*per-* "*sona mixta,*" or "*persona mixta cum sacerdotibus statutis* "*ecclesiæ.*" "In which case, the king might maintain "his jurisdiction by prescription, by which it appeareth "that prescription doth prevail against express canon."* The act, as to the supreme head of the church, was declarative of ancient law. It did not create any new right, it only gave a new designation. To a certain extent, this and subsequent acts have enlarged monarchial powers over those of an ecclesiastical character. But even these enlargements have all been based upon, and sanctioned by, original prerogative rights.

Statute, A.D. 1535. 26th Henry VIII., cap. 1.

To prescriptive right have been added statute laws. The most expressive is that of the 26th Henry VIII., cap. 1, and is as follows,—"Albeit the king's majesty "justly and rightfully is and ought to be supreme "head of the church of England; and so is recognised "by the clergy of this realm in their convocations; "yet nevertheless, for *corroboration and confirmation* "thereof, and for increase of virtue in Christ's religion "within this realm of England; and to repress and "extirp all errors, heresies, and other enormities and "abuses heretofore used in the same; be it enacted "by the authority of this present parliament, that the "king our sovereign lord, his heirs and successors,

* Coke's Reports in the Common Pleas, 13th part, page 14.

" kings of this realm, shall be taken, accepted, and " reputed, the only supreme head on earth of the church " of England, called Anglicana Ecclesia; and shall have " and enjoy, annexed to the imperial crown of this realm, " as well the title and style thereof, as all honours, digni- " ties, pre-eminences, jurisdictions, privileges, autho- " rities, immunities, profits, and commodities to the " said dignity of supreme head of the same church " belonging and appertaining; and that our said sove- " reign lord, his heirs and successors, kings of this " realm, shall have full power and authority, from time " to time, to visit, repress, redress, reform, order, correct, " restrain, and amend all such errors, heresies, abuses, " offences, contempts, and enormities, whatsoever they " be, which, by any manner of spiritual authority or " jurisdiction, ought, or may lawfully be reformed, " repressed, ordered, redressed, corrected, restrained, " or amended, most to the pleasure of Almighty God, " the increase of virtue in Christ's religion, and for the " conservation of the peace, unity and tranquillity of this " realm, any usage, custom, foreign laws, foreign autho- " rity, prescription, or any thing or things to the con- " trary hereof, notwithstanding."

The history of this extraordinary act is soon told. The attorney-general had filed *ex officio* informations against the clergy of the two provinces, for having acknowledged the legatine authority of Cardinal Wolsey. The king sought to enforce against them the penalties inflicted by the 27th Edw. III., cap. 1, and the 16th Richard II., cap. 5. By these acts, they had

CHAP. V. Sect. 3.

The supremacy.

incurred the pains of premunire; which confiscated all their estates, banished them from the country, and placed them out of the king's protection. They purchased of the king a pardon. The clergy of the province of Canterbury taxed themselves to the amount of one hundred thousand pounds; those of the province of York to a smaller amount. Contrition was required to be followed by submission. The act, therefore, recites that "the convocations had *acknowledged*" the king to be supreme head of their church. They had, however, inserted the words, "*quantum per legem* "*Christi licet.*" "I will have none of your quantums, "nor tantums," exclaimed the king, when the provision was shown him. Had the limitation been admitted, the sting of the law would have been extracted. It therefore passed in its present form. Refusing to acknowledge the king's supremacy in the *church*, though never denying it in the *state*, cost Sir Thomas More, the then lord chancellor, and Fisher, bishop of Rochester, their heads. Many others, of inferior rank, were punished for the same offence.

It will be observed, that the act is declaratory. It imposed no penal sanction. That was reserved till the time of Edw. VI. The first of his reign, cap. 12, sec. 6, declared, "that any person who by open preaching, "express words or sayings, should affirm that the "king of this realm, for the time being, is not, or "ought not to be, the supreme head on earth of the "church of England and Ireland;" together "with "their aiders, comforters, abettors, procurers and

Statute, A.D. 1547.

"counsellors," should, for their first offence, "lose and "forfeit to the king all his and their goods and "chattels, and also suffer imprisonment at the king's "will;" and for the third offence, "shall be deemed "and adjudged high traitors, and shall suffer pains of "death; and lose and forfeit all their goods and "chattels, lands and tenements, as in cases of high "treason."

Mary was no sooner married to Philip than parliament repealed the act of Henry, and declared (1st and 2nd Philip and Mary, cap. 8, sec. 43), "that the title A.D. 1553. "Supreme Head of the Church never was, nor could "be, justly or lawfully attributed or acknowledged to "any king and sovereign governor of this realm; nor "in anywise could or might, rightfully, justly, or law-"fully, by any king or sovereign governor of this realm, "be claimed, challenged or used."

It went on to declare, "And where your highness, "sovereign lady, since your coming to the crown of "this realm, of a good and Christian conscience *omitted* "*to write* the said style of supremacy, as well in gifts, "grants, letters patent; and also others have done the "same, as well in your time as before; and forasmuch "as, notwithstanding any law concerning the said style "of supremacy, it was in the *free choice, liberty, and* "*pleasure* of the king of this realm, and of your high-"ness, whether you would express the same." The act of Edward VI. was, therefore, made void, as "tending "to the derogation of the Pope's Holiness or of the See "of Rome."—Sec. 24.

CHAP. V. Sect. 3.

The supremacy. A.D. 1558.

Elizabeth returned Mary's compliment, *i.e.*, she repealed her sister's repeal of their father's act. The 1st of Elizabeth, cap. 1, sec. 17, re-annexed to the "crown such jurisdictions, privileges, superiorities, and "pre-eminences, spiritual and ecclesiastical, as by any "spiritual or ecclesiastical power or authority hath "heretofore been, or may lawfully be exercised or used "for the visitation of the ecclesiastical state and persons; "and for reformation, order, and correction of the same, "and of all manner of errors, heresies, schisms, abuses, "offences, contempts, and enormities."

By 19th section, all the officers of state, temporal and spiritual, were obliged to swear that in conscience they believed "that the queen is the only supreme "governor of this realm, as well in all spiritual or eccle- "siastical things or causes, as temporal." By using the word "governor," instead of "head," the objection, founded on seeming propriety, that a *female* ought not to be styled "*head*" of the church, was obviated. But this title was afterwards used in several acts in the reign both of Elizabeth and Anne.

The powers conferred on the sovereign by this title are of an extremely interesting description. We confine ourselves to such powers as are provided by express and unrepealed law. They are the following:—

1. By the 25th Henry VIII., cap. 21, sec. 2, the king is said to be "recognised supreme head of the church "of England by the convocations" (he was not yet authorised by *statute* law to assume this title), "and as "such entitled to receive Peter pence, portions, and

"other payments made to the bishop of Rome;" and also to obtain "such licence, dispensation, faculty, "receipt, delegacy, breves, bulls, and other instruments, "from the archbishop of Canterbury, as had been accus- "tomed to be obtained from the see of Rome," provided the same "were not repugnant to the law of Almighty "God."—Sec. 3. If the archbishop refuse such licences, dispensations, or other writings, they may be issued by the lord chancellor, and the archbishop punished for the neglect and disobedience.

2. The monarch can appoint "a vicegerent, for good "and due administration of justice in all causes and "cases touching the ecclesiastical jurisdiction, and for "the godly information and redress of all errors, "heresies, and abuses in the said church of England." The first vicegerent appointed by the king was "Thomas, "Lord Crumwell, who, with all other persons which here- "after shall have the said office of the grant of the king, his "heirs, and successors, shall sit and be placed upon the "same form that the archbishop of Canterbury sitteth "on, and above the same archbishop and his successors; "and shall have voice in every parliament, to assent or "dissent, as other the lords of the parliament."—31st Henry VIII., cap. 10, sec. 2. This act is styled "For "placing of the Lords," and to this day regulates the order of that house.

3. The monarch can make archbishops and bishops, to whose "collation and gift all archbishopricks and "bishopricks only appertaineth."—1st Edward VI., cap. 2.

CHAP. V. Sect. 3.

The supremacy.

4. The monarch can solve all doubts as to the making and consecration of archbishops and bishops. "By the supreme and absolute authority of the queen's "highness, and which she hath used in and about the "making and consecrating archbishops and bishops, "by which it is evident that there is no cause of scruple, "ambiguity, or doubt," but her highness, "by her "supreme power and authority, hath dispensed with all "causes or doubts of any imperfection or disability that "can or may in anywise be objected."—8th Elizabeth, cap. 1, sec. 2. And by the 39th Elizabeth, cap. 8, sec. 3, "any ambiguity or question as to the making, "ordaining, or *depriving* any archbishop or bishop by "authority or licence of the queen, heretofore made "between the beginning and the fourth year of her "reign," are removed.

5. The monarch can suppress all errors, heresies, schisms, abuses, offences, contempts, and enormities in the church of England.—26th Henry VIII., c. 1; 1st Eliz., cap. 1, sec. 17.

6. He can order what *ornaments* shall be used in the church, or by ministers thereof.—1st Eliz., cap. 2, sec. 26.

7. With the sovereign it rests to determine the *ceremonies* or rites of the church, "as may be most "for God's glory, the edifying of the church, and due "reverence of Christ's holy mysteries and sacraments." —1st Eliz., cap. 2, sec. 26.

8. The king has superintendence of the whole ecclesiastical estate of the realm, ecclesiastical things, and ecclesiastical causes.—1st Eliz., cap. 1, sec. 17.

9. The creation of new bishoprics in England, or within the king's dominions. "Our sovereign lord, of "his most gracious and blessed disposition, by his most "gracious letters patent hath made, erected, incorpo- "rated, and established divers and sundry bishops, and "sees of bishops, that is to say, Chester, Gloucester, "Peterborough, Bristol, and Oxford."—25th Henry VIII., cap. 20, sec. 4; and 34th Henry VIII., cap. 17, sec. 3.

10. He can command the archbishop of Canterbury to prepare certain forms of public prayer upon extraordinary occasions; and approve, alter, or reject such forms, and sustain the authority of the archbishop of Canterbury in requiring all archbishops, bishops, and clergy to use such forms in the manner prescribed. *Without such order*, neither the archbishop, "nor any prelate," can issue any "writing or instrument in causes unwont "and not accustomed to be obtained at the court of "Rome" (statute, 25th Henry VIII., cap. 21); nor do other than suggest the use of such prayers as are already prepared and prescribed in the Common Prayer Book.

11. The monarch has certain rents and profits from all ecclesiastical promotions, called first fruits. These were, in the time of Henry IV., A.D. 1404 (6th Henry IV., cap. 1), pronounced an occasion of "horrible "mischiefs, and a damnable custom, introduced of new "in the court of Rome." By the 26th Henry VIII., cap. 3, A.D. 1534, they were transferred to the king, seeing that he is "now recognised supreme head on

CHAP. V. Sect. 3. The supremacy.

" earth, next and immediately under God, of the church " of England." Mary, in 1555, not only renounced the title, but also the first fruits. (2nd and 3rd Philip and Mary, cap. 4.) They were, however, in 1558, re-annexed to the crown under 1st Elizabeth (cap. 4), and, finally, in 1703-4, Queen Anne (2nd and 3rd, cap. 11), who, as " the only supreme head on earth of " the church of England," was graciously pleased to remit the payment, and to grant them to the poor clergy.

12. The delegation to governors in the colonies of ecclesiastical powers. The governor of the Cape of Good Hope, therefore, thus writes:—" In the absence " of a bishop, the governor is *ex officio* ordinary." *

13. The alteration in " the names of the king, queen, " or royal progeny, in all prayers, litanies, and collects, " from time to time, fitted to the present occasion, " according to the direction of lawful authority."—13th and 14th Charles II., cap. 4, sec. 25. This " lawful authority" originally signified " the sovereign " and the archbishop of Canterbury *out* of council, now " it means the sovereign *in* council." †

* Eighth Report of Colonial Land and Emigration Commissioners, 1848, page 119.

† Stephens on the Common Prayer, page 566.

## SECTION IV.—APPOINTMENT OF ARCHBISHOPS AND BISHOPS.



"When cities were first converted to Christianity "the bishops were elected by the clergy and the people, "for it was thought convenient that the laity, as well "as the clergy, should be considered in the election of "their bishops, and should concur in the election; that "he, who was to have the inspection of them all, should "come in by a general consent." *

In the council held at Clermont, A.D. 533, it was decreed, "that he who is a candidate for a bishoprick "shall be ordained by the election of the clergy and "citizens." †

The case is widely different now. Not only have the people no voice, but the church itself is not heard in the election of its bishops. Although spiritual persons, exercising spiritual functions, they are constituted by a secular head, as they are appointed by the sole authority of the crown.

One of the most emphatic acts, upon the affairs of the church, was that passed at Lincoln; it is entitled "Articuli Cleri," and is the 9th Edw. II., cap. 14. A.D. 1315. Speaking of the appointment of bishops, it says:— "If any dignity be vacant, where election is to be "made, it is moved, that the electors may freely make "their election, without fear of any power temporal;

* Burn's Ecclesiastical Law, vol. i., p. 199 (Bishop).

† Milner's Church History, vol. iii., p. 24.

CHAP. V. Sect. 4.

Appointment of archbishops and bishops.

"and that all prayers and oppressions may in this "behalf cease." This was the request of the church. "The answer: they shall be made free, *according to the* "*form of statutes and ordinances.*" This was the reply of the crown.

What the form of this free election was, may be gathered from a subsequent law. It is the 25th Edward III., stat. 6. It describes "free elections," as they formerly had been, as a "grant by the king's pro- "genitors upon a certain form and condition as to "*demand* license from the king to chuse; and after the "election to have his royal assent, and not in other "manner."

Statute, A.D. 1350.

In other words, the church had permission to elect, the nomination of the person might seem to rest with the church; but *over the* election the crown had a veto. Modern legislation has withdrawn even this retiring remnant of ecclesiastical freedom. The 25th Henry VIII., cap. 20, sec. 4, appoints the manner in which archbishops and bishops are to be elected. It is as follows:—

Statute, A.D. 1533.

"Whenever any archbishoprick or bishoprick shall be "void, the king *may* grant to the dean and chapter a "licence under the great seal, as *of old time* hath been "accustomed, to proceed to the election of an archbishop "or bishop with a letter missive, containing the name "of the person which they shall elect and chuse.* "By virtue of which licence the dean and chapter shall,

* This letter missive restricts the election to the person named, and therefore renders a FREE election impossible.—See Appendix, No. III.

" with all speed and celerity, in due form, elect and " chuse the said person named in the said letter mis- " sive, to the office of archbishop or bishop, and *none* " *other*. And if they do defer or delay their election " above twelve days, then, for such default, the king's " highness, his heirs and successors, at their liberty " and pleasure, shall nominate and present, by their " letters patent, such a person to the said office and " dignity as they shall think able and convenient for " the same."

By other sections of the act, provision is made for the consecration of the person elected by the dean and chapter, or nominated and presented by the monarch. Delay, or refusal, on the part of those archbishops and bishops whose offices for the consecration may, by the king, be required, exposes them to certain penalties. And "the dean and chapter shall refuse or delay for "twenty days to elect the person nominated; and all "persons who admit, maintain, obey, or allow any "censures, inhibitions, or other process or act, in "hindrance of the due execution of the act," then " every dean and particular person of the chapter, and " every archbishop and bishop, and all other persons so " offending, and their aiders, counsellors, and abetters, "shall run in the dangers of the acts of premunire, "imposed by the statutes of the 25th of Edward III., "and 16th Richard II.," *i.e.*, fine, outlawry, confiscation of goods, lands and tenements; and also give security for good behaviour.

The most expressive comment upon this extraor-

CHAP. V. Sect. 4.

dinary act is supplied from the 1st Edward VI., cap. 2. It says:—

Appointment of archbishops and bishops. Statute, A.D 1550.

"Forasmuch as the elections of archbishops and "bishops by the deans and chapters be as well to the "long delay as to the great costs and charges of such "persons as the king's majesty giveth any arch-"bishoprick or bishoprick unto; and *whereas the said* "*elections be in very deed no elections*, but only, by virtue "of a writ of *congé d'elire*, have *colors, shadows, or* "*pretences of elections*, serving, nevertheless, to no "purpose; and seeming also derogatory and prejudicial "to the king's prerogative royal, to whom only apper-"taineth the collation and gift of all archbishopricks "and bishopricks:" "Be it enacted, therefore, that "from henceforth no *congé d'elire* be granted, nor "*election* of any archbishop or bishop made; but that "the king may, by his letters patent, at all times when "any archbishoprick or bishoprick is void, confer the "same to any person whom the king shall think meet."*

By virtue of the above act, Edward made all his bishops by letters patent. Among others was Miles Coverdale, who was appointed bishop of Exeter. In the letters patent the king used these words—"Nos "nominamus, facimus, *creamus*, declaramus et consti-"tuimus per præsentes."†

* The plea that the old mode of election ought to be avoided, because of "the *great costs*" to the person appointed bishop, was evidently itself a pretence; for, in the 2nd section of this very act, it is provided that "all "such fees, interests, and duties, as of old time have been accustomed, "shall be paid, done, and yielded."

† Rymer's Fœdera, vol. xv., page 283.

Appointment of archbishops and bishops.

As might be expected, the act of Edward was repealed immediately upon the accession of Mary, which repeal was, in its turn, set aside, when Elizabeth came to the throne. Instead of reviving the act of Edward, which took away all power, except ministerial, from the dean and chapter, in the election of bishops, Elizabeth's parliament revived the 25th Henry VIII. In other words, the 8th of Elizabeth brought back a custom, which a previous law had pronounced "a color, "a shadow, and a pretence." And such, to this day, are all episcopal elections.

Suffragan bishops.

A new order of bishops was created by the 26th of Henry VIII., cap. 15. They were called suffragans, whose duties were confined to "the more speedy "administration of the sacraments and other cere- "monies." The towns of Thetford, Ipswich, Colchester, Dover, Guilford, Southampton, Taunton, Shaftsbury, Molton, Marlborough, Bedford, Leicester, Gloucester, Shrewsbury, Bristol, Penrith, Bridgewater, Nottingham, Grantham, Hull, Huntingdon, Cambridge, Berwick, St. Germain's in Cornwall, and the Isle of Wight, were to be taken as sees of suffragan bishops. If the archbishops or bishops "were disposed" to have a suffragan, they might name two persons to the king, one of whom he was to appoint; and having done so, he could require the archbishops of Canterbury or York to consecrate his nominee. This act Mary repealed; it was revived by the 1st of Elizabeth, cap. 1, sec. 9; but has not for many years been carried into effect.

The principle here established—that of a gradation

CHAP. V. Sect. 4.

Appointment of archbishops and bishops.

in the order of the episcopate—was no innovation; it had obtained, both antecedently and subsequently to the passing of the above law. In Lanfranc's canons we read, "It is ordained, according to the council of Milevis, "Brague, and the fourth of Toledo, that the bishops "should take place, according to the time of ordination, "unless their sees had the privilege of precedence by "ancient custom. The seniors being asked what they "had seen or heard as to this point, had time given "them till next day to make answer, as they said, viz., "that the archbishop of York ought to sit at the right "hand of him of Canterbury; he of London on the "left; Winchester next to York; but if York were "absent, then London on the right hand, and Win-"chester at the left of Canterbury."

Canons, A.D. 1075.

Statute, A.D. 1539.

The statute (31st Henry VIII., cap. 10, sec. 3) somewhat varies this arrangement. Canterbury takes precedence. "Next to him, on the same form and side, "shall sit the archbishop of York; next to him, on "the same form and side, the bishop of London; "and next to him, on the same side and form, the "bishop of Durham; and next to him, on the same "side and form, the bishop of Winchester; then all the "other bishops, of both provinces of Canterbury and "York, shall sit and be placed on the same side, after "their ancienties, as it hath been accustomed."

This gradation of rank is not merely nominal. Every bishop is subordinated to the authority of the archbishop of Canterbury. With him it rests to superintend, counsel, or direct, all other bishops. In case of

heresy, his grace would try them; and if justified by proof, deprive or suspend them. Nor is it reserved for such rare occurrences to illustrate the supreme executive authority of the archbishop of Canterbury. He has a more tangible method of constantly reminding bishops of their dependant position. "Every bishop," (says Gibson, 133,) "whether created or translated, is "bound, immediately after confirmation, to make a "legal conveyance to the archbishop of the next "avoidance of one such dignity or benefice, belonging "to his see, as the said archbishop shall chuse and "name, which is therefore commonly called an option. "Ever since Cranmer's time, the way hath been to "convey the advowson either of the first dignity or "benefice that should fall."

Appointment of archbishops and bishops.

The seals of a deceased bishop are also surrendered to the archbishop; and, in order to prevent their being used to ill purposes by executors or others, they are to be broken.

In his own diocese, each bishop acts upon his personal responsibility. A very ancient canon retains to this day all the freshness of a new enactment upon this point, for it is constantly and inviolably acted upon:—

Separate authority of bishops.

"Let the bishop, who for the time being is honoured "with the pall by the apostolical see, promote and "canonically ordain them [the bishops] to the sacer-"dotal honour; and let them be subject to his ordering "only; with this express condition, that *none of the "bishops presume to meddle with the rights of another "prelate; but that every one preserve his own rights*

Canon, A.D. 679.

CHAP. V. Sect. 4.

Appointment of archbishops and bishops.

"*untouched*, and study to instruct and convert the "people."* At the time this canon was made, there were twelve bishops in Britain; but, although the number has since that period been greatly augmented, these distinct rights of prelates have not, for above one thousand years, been invaded. They have no more authority over each other, so as to interfere with matters out of their respective dioceses, than have the rectors or vicars of different parishes any right to order or govern one the other.

In the appointment of a bishop, the people have an assumed concurrence, as well as in the ordination of a priest. At the time of the confirmation of a bishop, objectors are called upon to state their dissent. Montague was, in 1628, objected against by one Jones, on account of his popish tendencies. But as the objection was not given in writing, signed by an advocate, nor presented by a proctor, it was overruled. In the more recent case of Dr. Hampden, the objectors took the precaution of observing these forms. They, however, availed not. The court of Queen's Bench held that the objection, though right in form, was yet void; inasmuch as the summons to objectors is itself only a matter of course; and has not been included in, or recognised by, the law.

* Johnson's Ecclesiastical Laws (A.D. 679.)

## SECTION V.—EPISCOPAL SEES.



The crown of this realm is the sole fountain of all ecclesiastical as well as civil dignity. The sovereign has uniformly claimed and exercised the right of creating bishops, and also of apportioning out certain territorial districts as archbishoprics or bishoprics. It was so in the Anglo-Saxon times. Bede, under date 971, states, "that by favour of King Edred and of "all his witten (parliament) Oskytel was consecrated "archbishop."

Canons, A.D. 1075.

In the time of Lanfranc, it was "granted by royal "favour and the authority of synod to three bishops to "remove from villages to cities: *i.e.*, Herman, from "Thirburn to Salisbury; Stigand, from Seolsey to "Chichester; and Peter, from Lichfield to Chester. "The case of some who are yet in villages, is deferred "till the king return from foreign parts."

After Lanfranc's death, in A.D. 1089, William Rufus seized the revenues of the see, and for five years refused or neglected to appoint a successor. At length, the bishops presented to the king a petition, praying he would grant them leave to send a form of prayer to be used in all the churches, "that God would move the "heart of the king to choose an archbishop." "You "may *pray* as you like, I shall *do* as I like," was the haughty reply.*

Nor was it till 1093 that Anselm (who had disputed

* Henry's History of England, vol. v., p. 280.

CHAP. V. Sect. 5. Episcopal sees

with Rufus, and also with his brother, Henry I., concerning the right of investiture,) was consecrated. Bishops received a ring and pastoral staff from the king, upon their doing homage to him, before their consecration; and, from time immemorial down to the present, they have done homage to the crown, for their temporalities. Spelman (vol. ii. page 435) informs us that, in 1301, William de Gainsburgh was made bishop of Worcester by papal bull. The king not only obliged him to renounce the "temporalia," but fined him one thousand marks, for admitting a bull so prejudicial to the rights of the crown.

Statute, A D. 1225.

The principle was established in a declaratory act:—viz., the 9th of Henry III., cap. 5, which says, "The custodies of archbishopricks, bishopricks, and "dignities vacant, *appertain to us;* such custodies shall "not, however, be sold."

A.D. 1340.

In the next century, another act passed, 14th of Edward III., cap. 3, which was designed to repress the arbitrary conduct of the monarch, by providing that "the temporalities of the archbishops and bishops "shall not be taken into the hands of the king, *without* "*a true and just cause, according to the law of the land,* "*and judgment thereupon given.*" The church thus drove the monarch to a court of law, before he could take *actual* possession of its property. It therefore thought itself safe; and so it would have been, had it not abused its privilege. But the Pope, not content that the plea should be tried "in the king's court," invaded the prerogative of the crown, by himself

" ordaining to translate some prelates out of the realm, " and some from one bishoprick into another within the " realm."

This act of aggression was denounced, by the 16th of Richard II., cap. 5, derogatory "to the crown of " England, which hath been so free at all times, that it " hath been in no earthly subjection, but immediately " subject to God in all things touching the regality and " to none other, that it should be submitted to the Pope ; " and the laws and statutes of the realm defeated and " avoided at his will." It therefore declared, that "if " any purchase or pursue, or cause to be purchased or " pursued, in the court of Rome, or elsewhere, any " bulls, instruments, or other things, which touch the " king and his regality ; and they which bring them " within the realm, or them that receive, or make " thereof notification, together with their notaries, pro- " curators, maintainers, abettors, fautors, and counsellors, " shall be put out of the king's protection, and their " lands and tenements, goods and chattels forfeited " to the king ; and be attached by their bodies, if they " may be found, and brought before the king and his " council, there to answer to the case ;" or, if not found, they shall be put in exigent and outlawed, according to the 27th of Edward III., cap. 1.

Statute, A.D. 1392.

Nor are these unrepealed and still necessary acts opposed to the decision of the church itself. By one of the articles (the 12th) of Clarendon, (passed A.D. 1164, and therefore two hundred and twenty-eight years antecedent to the above first mentioned act,) it declared,

CHAP. V Sect. 5.

Episcopal sees.

"when an archbishoprick, bishoprick, abbacy, or "priory is vacant, it ought to be in the king's hand, "and he shall receive all the rents and issues, as of his "own demesnes; and when the church is to be provided "for, the king is to send his mandate to the chief "parsons (dean and chapter) of that church, and the "election ought to be made in the king's chapel, and "by the advice of the king's parsons, whom he shall "call for this purpose, and the elect shall do homage "and fealty to the king as to his liege lord for his life "and members and earthly honours (with a saving to "his order) before he be consecrated."

The "homage" referred to is part of the feudal system. The form, as stated by law, (17th Edw. II., statute 2, A.D. 1324,) consisted in the man holding his hands together, between the hands of his lord, and saying, "I become your man from this day, both for "life, for member, and for worldly honour." But every bishop, dean, or other ecclesiastical body politic (sole), who holds of the crown *in capite*, omits, at the time of homage, the words, "I become your man," because each one hath professed himself the man of God. But he does say, "I do homage unto you, and to you shall "be true and faithful; and faithful to you bear, for the "lands and tenements which I hold of you; and the "service due of the temporalities of my archbishopric "or bishopric, the which I claim to hold of you, "and the which ye gave and yield to me, I will be "observant."*

* Coke's Institutes, vol. i., p. 258.

Episcopal sees.

In fact, the whole ecclesiastical estate pertains to the crown. In acknowledgment of this, and in addition to the homage of archbishops or bishops, every "ecclesiastical person, holding dignity, benefice, office, or promotion spiritual," is by law required to pay to the king first fruits and profits for one year; "and *above* this, the king, as the only supreme head on earth, next immediately under God, of the church of England, is entitled to the value of the tenth part of the yearly revenues of any archbishoprick, bishoprick, or other benefice or promotion spiritual, whatsoever." But we need not go to payments, for confirmation of a principle. We have this latter established beyond dispute, in the 1st of Elizabeth, cap. 1, secs. 16 and 17. The clauses are as follows:—

26th Henry VIII., cap. 3, sect. 2 and 9.

"And to the intent that all the *usurped* and foreign power and authority, spiritual and temporal, may for ever be already extinguished, and never be used and obeyed within this realm, or any other your majesty's dominions or countries, *may it please your highness*, that it may be further enacted, by the authority aforesaid, that no foreign prince, parson, prelate, state or potentate, spiritual or temporal, shall at any time use, enjoy or exercise any manner of power, jurisdiction, superiority, authority, pre-eminence or privilege, spiritual or ecclesiastical, within this realm, or within any other your majesty's dominions or countries that now be, or that hereafter shall be; but from henceforth the same shall be clearly abolished."

The papal authority having thus been destroyed

CHAP. V. Sect. 5.

Episcopal sees.

another power was substituted. The succeeding clause therefore provided, "that such jurisdictions, privileges, "superiorities and pre-eminences, spiritual and eccle-"siastical, as by any spiritual or ecclesiastical power or "authority hath heretofore been or may be lawfully "exercised or used, by common or statute law, for the "visitation of the ecclesiastical state and persons, shall "be annexed and united to the imperial crown of this "realm."

It appears, therefore, that by prescriptive and immemorial right, as well as by statute law, the sovereign of this country has the sole power to create new dioceses. This may be done by letters patent, as was the case with Peterborough, Chester, Bristol, Gloucester, and Oxford, by Henry VIII. The act which refers to such creation (34th and 35th Henry VIII., cap. 17,) states, that the king had also, "by letters patent, given to each see "divers manors, lands and tenements." They were, it is true, parts of the remains of dissolved monasteries, which this monarch had had, by law, delivered into his hands. It was at his option, therefore, to retain the possession to his own use, or surrender it to ecclesiastical purposes. He gave up a portion, that he might with more credit keep the remainder.

It may not, perhaps, be unnecessary to add upon this point, in further illustration of the fact, that bishoprics are at the sole disposal of the crown, that every newly appointed bishop, after his consecration, not only does homage, but receives from the sovereign a restitution (as it is called) of the temporalities of the See.

The curious reader will find, in Rymer's *Fœdera*, numerous records upon this point. One, in the year 1628, contains these words, "ei restitutimus per pre- "sentes," and they are the terms now usually adopted. But for this restitution the bishop would be restricted to spiritual functions.

In the words of Coke, we sum up the whole:—"All "the bishopricks in England" [or the British empire] "are of the king's foundation, and the king is patron of "them all."* So, in fact, is the express provision in the 25th Henry VIII., cap. 20, sec. 6, "that every arch- "bishop and bishop, suing their temporalities out of the "king's hands, as hath been accustomed, and making a "corporal oath (homage) to the king, and to none "others, shall have and take their only restitution out "of the king's hands, of all their possessions and "profits, spiritual and temporal."

## SECTION VI.—CHURCH PROPERTY.

Whatever property is now possessed by the ecclesiastical corporation of this country, has been bestowed upon it by individual bounty. The state, as such, has but once bestowed a pecuniary grant. (See "Churches," p. 228.) It may have confirmed the possession of lands given by bequests; it has watched over, by means of the court of chancery, the appropriation of money arising from these and other sources; it has often materially altered the uses to which such revenues were

* Coke's Institutes, book i., chap. viii.

CHAP. V. Sect. 6.

Church property.

to be applied, and in not a few instances alienated them from their original purpose; it may even have gone so far as to uphold, by grants from the public money, certain pre-existing institutions;—but the state did not create the *original* portion of church property. Even tithes came as gifts from the proprietors of estates, and are, in many of the original grants, and in not a few statutes, recognised and stated as "offerings."

Origin.

The greater part of the property belonging to the church came into its possession by bequests, or fell into its hands by the operation of those laws it had made respecting the estate of intestates. A reference to section 8, chapter iii., relative to wills and administrations, will illustrate the daily opportunities those laws afforded priests to enrich the church.

The accumulation of land by these and other means at length compelled the state to attempt to put a stop to the evil. We have, therefore, acts relating to mortmain. The first was in A.D. 1225 (9th Henry III., cap. 36.) But this law the church sought to frustrate, by decreeing, eleven years afterwards, that no man should make his will unless the parish priest were present, when at least *money* might be bequeathed. Against this ecclesiastical cupidity the courts of common law were always opposed. We have a very curious illustration of this fact from the canons. Boniface, archbishop of Canterbury, uncle by the mother to Eleanor, queen consort to king Henry III., published his constitutions from Lambeth. Among the rest, he declared—

Mortmain.

Canons, A.D. 1261.

"Sometimes princes and other faithful men do, by

"their charters, give possessions and liberties to churches "or prelates, in which this, or the like clause, is con- "tained:—'All of such a fee or estate, which belongs "or may belong to me, or my heirs, without any "exception, I give and grant; and by this charter "confirm to such a church or monastery, or to the "prelates and officers thereof:'—And if afterwards a "dispute arise in the secular court, concerning any "particular article of the purtenances, not expressly "mentioned in the charter, the secular judges affirm "that the charter is void and null, because that article "is not expressed in it; and so the word *all*, according "to them, signifies *nothing*, but what is particularly "expressed; and if the article of liberty contained in "the charter be expressed by special words, the same "judges affirm that it is void and null, if the church or "monastery hath not used that liberty." Thanks to the ingenuity of secular men, for thus providing an effectual remedy against priestly cupidity!

But though the first secular law, relative to lands held in mortmain, was very stringent, it was evaded. The 15th Richard II., cap. 5 (A D. 1391), says that, "Now of late, by subtile imagination, and art, and "engine, spiritual persons have entered in divers "lands, without licence of the king and of the chief "lords."

"The subtile imagination" was again and again repeated, so that a series of laws (the recital of which would be tedious) have, at various periods, been made by the secular authority, which amount to a pro-

CHAP. V. Sect. 6.

Church property.

hibition to dispose by will of *land*, or of money to be laid out in land, for any religious purpose.

An exception has, however, been made in favour of "grants of land, houses, titles, advowsons, rent-charges, "and other hereditaments, or of money to be laid out in "lands, for the site of a church, chapel, or churchyard, "parsonage-house, or glebe, or the use of any church "or chapel, or incumbent, or the endowment of any "church or minister," notwithstanding the Mortmain Acts, or the absence of a licence to hold: provided such grants do not exceed in value £300 per year. 3rd and 4th Vict., cap. 60, secs. 2 and 17.

Personal grants. A.D. 1350.

That church lands were given by persons and not by the state, is distinctly affirmed by ancient laws. Thus, the 25th of Edward III., stat. 6, says, "The holy church "of England was founded in the estate" (*i.e.*, the legal possessions, not the polity) "of prelacy by the king's "progenitors, and the earls, barons, and other nobles "and their ancestors, to inform them and the people "of the law of God; and to make hospitalities, alms, "and other works of charity, in the places where the "churches were founded, for the souls of the founders, "their heirs, and all Christians; and certain possessions "were assigned by the said *founders* to the prelates "and other people of the holy church; and, especially, "possessions were assigned to archbishops, bishops, "abbots, priors, and all other people of holy church."

The phraseology employed is remarkable. The "founders," "ancestors" of "kings, earls, barons, and "other nobles" bestowed lands in their individual, and

not in their legislative capacity. Had this latter been the fact, the usual parliamentary terms would have been employed, conveying the idea of its being an act of the legislature.

This act of Edward III. was copied by the 24th of Henry VIII., cap. 12. It says, "The king's most "noble progenitors, and the *ancestors* of the nobles of this "realm, have sufficiently endowed the said church, both "with honour and possessions."

Statute, A.D. 1532.

As trust property, the possessions of the church are, and always have been, subject to the supervision and authority of law; and never were supervision and authority more imperiously required. The statute of Edward III., just referred to, based the interference of the state upon the fact, that these possessions, which did then "extend to great value," were, "by the bishop of "Rome, accroached, against the good disposition and "will of the first founders,"—sec. 2. It then assigned "to prelates and other people of holy church, the free "collations and presentments in their dignities and other "benefices in the manner as they were *enfeoffed by their* "*donors;*" or, as in another section (the 3rd) it is stated, "they were granted by the king's progenitors, and the "ancestors of other lords, founders of the said dignities "and benefices."

Perversion of uses.

The particular form this misappropriation of church revenues then assumed, is stated in the act to have been that the Pope granted benefices "to aliens and to "cardinals, as if *he* had been patron." This he did to such an extent, that, "if suffered, there should scarcely

CHAP. V. Sect. 6. Church property.

"be any benefice but should be in the hands of aliens "and denizens."

The Pope himself also came in for a share. "Now "of late, the bishop of Rome, by procurement of clerks "and otherwise, doth reserve to his collation, as well "archbishopricks, bishopricks, abbeys, and all other "dignities and benefices, and taketh of all such the "first fruits and many other profits,"—sec. 2. The amount of these extortions, Burn places at £70,000 yearly, which, at that time, was an immense sum.

Alienation of church lands by ecclesiastics.

But if the state had just occasion to complain that Rome secretly withdrew a very large and constantly increasing revenue from English endowments, a still more grave condemnation was established against the English clergy for their alienation of church lands.

Canon, A.D. 1222.

It is true, a canon passed this year declared that "No abbot, prior, archdeacon, dean, or any other "inferior clerk, do sell, mortgage, or alienate to their "kindred, friends, or any other person, the possessions "or dignities belonging to their churches."

The interdiction proved the practice; and what is more, the practice continued in spite of the interdiction. Edward III. had charged the church in his day with appropriating its *revenues* contrary to the "will of the "first founders." It afterwards went further, and alienated not revenues only, but the lands themselves. All this was openly and for more than three hundred years done, by archbishops and bishops, until the law again stepped in, and rendered such alienation void.

Statute, A.D. 1558.

The 1st of Elizabeth, cap. 19, sec. 4, declared that

"All gifts, grants, feoffments, fines, or other convey-
"ance or estate done or suffered by any archbishop or
"bishop, of any houses, castles, lands, tenements, or
"hereditaments, being parcel of the possessions of his
"archbishoprick or bishoprick, to any person or persons,
"bodies politic or corporate, whereby any estate should
"pass from the same, shall be utterly void."

Still, a most extraordinary proviso was introduced. After the word "corporate," the following words are inserted in a parenthesis, ("other than the queen's "highness, her heirs or successors.") A moral and legal anomaly was thus created. The crown might, and did receive, from archbishops or bishops, lands, which no other person or body could receive. And so the law remained during all Elizabeth's reign.

Statute, A.D. 1603.

James I. (cap. 3) surrendered the right, "out of his "meer and godly motion, and of his blessed disposition "for the public good, without all regard of any private "respect." So that neither the sovereign nor any subject can now "have any estate pass to them out of "any archbishoprick or bishoprick." Church lands can only be leased for twenty-one years, or three lives.

The extent to which these alienations of church lands were carried by archbishops, bishops, and "other persons "of holy church," cannot now perhaps be accurately stated. Certain, however, it is, that the state has never either confiscated church property, nor diverted the particular appropriation to an extent equal to that done by officers of the church, (those in whom the legal estate was vested). Talk of spoliation! The ecclesiastical family,

CHAP. V. Sect. 6.

Church property.

or rather, the heads of the family, did once so systematically carry on a secret and gigantic plan of robbery, against their successors, that but for the interposition of law, the whole trust property of the church might by this time have been alienated from its possession.

Re-appropriation of church revenues, *contrary* to the will of the donors.

Men who found charitable or religious institutions generally provide the rules by which they shall be governed. The law gives them the power of doing so. It does not, however, forego its power to alter or even annul all such rules.

As to masses.

One of the most common modes in which men formerly endowed the church, was to leave certain sums of money payable out of their estates, or the estates themselves, for the celebration of masses for the repose of their souls. The 21st Henry VIII., cap. 13, sec. 30, prohibited "a spiritual person from taking "any particular stipend or salary to *sing for any soul.*" This was prior to the dissolution of monastic institutions. It related to salary rather than to land. It was, however, the thin end of the wedge, by which Henry eventually wrested out of the hands of ecclesiastics the greater part of their possessions.

Edward VI. carried the principle as to masses still further. The 1st of that monarch, cap. 14, took away not merely the salary of chantry priests, but "all "manors, lands, tenements, rents or other things, given "by will, devise or otherwise, for the finding of any "chantry priest, and wherewith he was sustained," and gave them into "the very actual or real possession

"of the king, in as large and ample manner as they "had been enjoyed or occupied by their former pos- "sessors."

The reason assigned in this act for thus laying hold of chantry lands, is given in these words:—"A great "part of superstition and errors in the Christian reli- "gion hath been brought into the minds of men by "reason of the ignorance of the true, and perfect sal- "vation by Jesus Christ, and by devising vain opinions "of purgatory and masses, satisfactory to be done for "them which be departed."

These chantry priests had been pronounced, by a previous act (cap. 9) of the same year, "for the most "part, unlearned and very ignorant persons, not able "to do any part of their duties." Yet it was to these men that, in the city of York, many parish churches were assigned, in consequence of the priest's clear yearly income "not exceeding six and twenty shillings "and eightpence." Parishes were therefore united, the profits of which were not to exceed twenty pounds yearly. "The mayor, recorder, and aldermen," were authorised "to pull down superfluous churches," and bestow the same towards the "reparation and enlarge- "ment of other churches, *bridges of the city*, and relief "of the poor."

But this 14th chapter of the 1st Edw. VI. swept away all the chantries in the kingdom. The whole of this property was henceforth to be appropriated to found "grammar schools, preaching, and such godly intents "and purposes as, in every great town or parish,"

CHAP. V. Sect. 6.

Church property.

might be fixed upon by any two of the commissioners appointed under the authority of the act; who were also authorised to make "ordinances and rules concerning "the service, use, and demeanour of the priests and "schoolmasters" that were "to be appointed," sec. 11. More than this. Each commissioner was bound by oath, "as he will answer before God, to execute "the commission beneficially towards deans and other "ministers of the suppressed chantries; and *towards "the maintenance of piers, jetties, walls or banks, against "the rages of the sea, havens and creeks*," sec. 13. And, still further, the "king might at any time during his "life, at his will and pleasure, alter the nature and "condition of all manner of obits within the Univer- "sities of Oxford and Cambridge, and any other place; "and the same obits, *so altered, to dispose to a* BETTER "USE, as to the relief of some poor men, being students "or otherwise," sec. 37.

But if the taking away of the salary of a chantry priest "for singing for souls," was the thin edge of the wedge, it proved a powerful lever, by which more important and valuable church possessions were eventually seized by the state.

The principle of the state stepping in between the will of the donor and the duty of the recipient, once established by Henry in respect "of singing for souls, "or saying masses," supplied him with after-proofs of power. His grand exploit was seizing the monasteries.

As to monastic institutions. A.D. 1535.

The 27th Henry VIII., cap. 28, gave to the king all "such lesser monasteries, priories, and other religious

"houses of monks, canons and nuns, which had not in "lands, tenements, rents, tithes, portions and other "hereditaments, above the clear yearly value of two "hundred pounds." And also, "all such monasteries, "abbeys, and priories, which, for one year before the "passing of this act, had been given and granted to his "majesty by any abbot, prior, or prioress, or that had "*otherwise** been suppressed or dissolved; and all their "lands, to have and to hold all the same unto the king's "majesty, his heirs and *assigns* for ever, to doe and "use therewith, at his and their own wills, to the "pleasure of Almighty God, and *the honour and profit* "*of this realm.*" "All such ornaments, jewels, goods, "chattels, and debts, as belonged to the chief gover- "nors of these monasteries, were given to the king for "his own proper use."—(Sec. 5.)

From the lesser the monarch proceeded to the greater monasteries, or those above two hundred pounds a year. Within four years, these also fell into his hands. The 31st Henry VIII., cap. 13, states, that "the gover- "nors and governesses of their own free and volun- "tary minds, without constraint or compulsion [?], had "renounced, left, and forsaken," all their possessions; these were very extensive, and included hospitals, colleges, chapels, manors, lordships, and a variety of

* "*Before* this time, Cardinal Wolsey (by licence of the king and of "Pope Clement VII.) had obtained a dissolution of above thirty reli- "gious houses (most of them very small), for the founding and endowing "his colleges at Oxford and Ipswich; so that the Pope himself had made "a precedent for the dissolution that followed."—*Gibson Codex*, vol. ii., page 1227.

CHAP. V. Sect. 6.

Church property.

other foundations. Many of these had been discharged from the payment of tithes, and this privilege reverted to the king and his grantees. Among these were the Duke of Norfolk, to whom "by word only" the king had granted the monastery of Sipton, in Norfolk; and Lord Cobham, who had the college of Cobham, in Kent. These grants were confirmed by the act.

A.D. 1541.

Two years elapsed, and another dissolution took place. By the 32nd Henry VIII., cap. 24, the possessions of St. John of Jerusalem (Knights Templars), in England and Ireland, were confiscated, because "the friars have "unnaturally sustained the usurped power of the bishop "of Rome, the common enemy to the king and to this his "realm, untruly affirming, maliciously and traitorously, "that the same bishop is supreme and chief head of "Christ's church by God's holy word." Yet, to these very "traitors" the act assigned, out of the possessions of the body, various pensions, amounting to nearly three thousand pounds yearly.

Subsequent acts (37th Henry VIII., cap. 4, and 1st Edward VI., cap. 14,) swept the *whole* monastic institutions away, and assigned all their lands, possessions, and goods, into the hands of these kings and their successors.

These bitter pills the church, with many a wry face, was obliged to swallow whole. Even Mary, though she restored the Roman Catholic religion, did not attempt to recover the property the church had had confiscated.

Statute, A.D. 1554.

By an express provision in the 1st and 2nd Philip and Mary, cap. 8, "the right and dominion of certain lands,

"goods, and chattels, belonging to archbishopricks, "bishopricks, monasteries, abbeys, priories, chantries, "colleges, and religious houses," that had been suppressed or dissolved, were to be retained by the persons who might have become possessed of them; and who "without scruple of conscience may enjoy them, without "impeachment by general councils, canons, or eccle- "siastical laws." (Secs. 31, 35, and 36.) By this last section it appears that not only had Henry VIII., and his son Edward VI., but Mary by herself, or jointly with her husband, had "conveyed, for great sums of "money, to divers subjects of the laity, many of these "ecclesiastical possessions," all of which are retained to this day.

As respects church property in general, the question is often anxiously asked, "To whom does it "belong?" The answer is easy and plain. It is *trust* property; as decidedly so, as any other property bequeathed for specific purposes. It is a maxim of law, that in respect of charitable uses (and religious bequests are of this kind), the legislature has the control. An ancient law lays down, therefore, this broad principle, "Such things as be thought neces- "sary for the king and the commonwealth [pro rege "et republicâ] ought not to be said to be prejudicial "to the liberty of the church."—9th Edward II., cap. 8. Statute, A.D. 1315.

## SECTION VII—CONVOCATION.

CHAP. V. Sect. 7.

One of the most important ancient rights of the church was to hold convocations. Each province exercised this privilege. Canterbury is called the upper, York the lower house of convocation. The times of meeting were determined by their respective archbishops. All things pertaining to the interests of the church were then determined. This was the parliament of the clerical estate, and where the taxes payable by the clergy were imposed.* The senate, it is true, confirmed the taxes convocation had taken the initiative to fix. More than this, the canons of the church were made in convocation. But whatever importance the church attached to this privilege (and it was ever held of no slight value), it is now, as a source of self-government, entirely lost. It dare not meet without royal permission.

Statute, A.D. 1534.

The 25th Henry VIII., cap. 19, says: "Whereas, "the king's humble and obedient subjects, the clergy "of this realm, have not only acknowledged, according "to the truth, that the convocations of the same clergy "is, always hath been, and ought to be assembled *only* "by the king's writ; but also, submitting themselves to "the king's majesty, hath promised, *in verbo sacerdotii,* "that they will never from henceforth presume to "attempt, allege, claim, or put in use, enact, promulge, "or execute any new canons, constitutions, ordinance,

* See also page 75.

"provincial or other, or by whatsoever other name they "shall be called in the convocation: Be it enacted, "according to the said submission and petition of the "said clergy, that they, nor any of them, from hence-"forth, shall presume to attempt, claim, allege, or put "in use any constitutions or ordinances, provincial or "synodal, or any other canons; nor shall exact, "promulge, or execute any such canons in their convo-"cations in time coming, unless the same clergy may "have the king's most royal assent and licence to make, "promulge, and execute such canons, upon pain of "every one of the said clergy doing contrary to this act, "and being thereof convict, to suffer imprisonment and "make fine at the king's will." Mary repealed this act. Elizabeth, cap. 1, secs. 6 and 10, revived it; and so far enlarged it as to make it extend "to your high-"ness, your heirs and successors, as fully and largely as "ever the same did extend to King Henry VIII., your "highness' father."

The right to assemble is, however, still, *pro forma*, preserved. At every new parliament, the sovereign generally convenes the convocation. But to what does it amount? To an irritating formality. Stripped of all powers, the clergy must not "claim," "attempt," or even "allege" any matter, which the sovereign shall not previously have allowed them to discuss or decide. If revived, the laity must form a part.

## SECTION VIII.—CHURCH BENEFICES.

CHAP. V. Sect. 8.

At first there were no parochial divisions of cures in England as there are now. The bishops and their clergy lived in common. The latter were sent out as itinerants to preach to the people; but as the number of Christians increased, this occasional going from place to place was found inconvenient. The bishops, therefore, fixed the bounds for the ministrations of the clergy. These bounds generally went along with the manors, the lords of which built and endowed churches for the inhabitants of their districts. This laid the foundation for patrons.

This division was gradual and voluntary. Many generations passed away before the whole country was parcelled out into parochial limits. Law never created them; but having once obtained an existence by custom and prescriptive right, the law has invariably ratified both the boundaries and the privileges of the respective parties interested in their preservation.*

The *Advowson* is the right of nominating a proper person to fulfil the duties and to receive the profits of an ecclesiastical benefice. Anciently, the bishop had the sole cure of souls in his diocese. He also received all the profits, which he and the clergy distributed into four parts:—one to the bishop, to support hospitality and to maintain the clergy living with him; one for the building and repair of churches; one for the poor

* Burn's Ecclesiastical Law (Par sh).

(15th Richard II., cap. 6, A.D. 1391); and one for the support of the inferior clergy, who were sent from place to place to preach and administer religious offices. As soon, however, as tithes were established as a law, *i.e.*, before or about the time of Charlemagne, it was usual for the bishop to allocate to his vicar or curate the whole or part of the tithes.

When the feudal lords, for the sake of having Divine service performed in their districts, were willing to alienate a part of their lands for building new churches, they were allowed to nominate a clergyman to the bishop, who was obliged to institute him, if *qualified*. Of this qualification the bishop, in 1315, by the 9th Edward II., cap. 13, was made the judge. It says:—

"Also it is desired that spiritual persons, whom our "lord the king doth present unto benefices of the church "(if the bishop will not admit them, either for lack of "learning or other cause reasonable), may not be under "the examination of lay persons in the cases aforesaid, "as it is now attempted, contrary to the decrees "canonical, but that they may sue unto a spiritual "judge for remedy as right may require." [The answer:] "Of the ability of a parson presented unto "a benefice of the church, the examination belongeth "to a spiritual judge; and so it hath been used hereto-"fore and shall be hereafter."

This law would have laid every benefice in the kingdom at the feet of the bishops, had not other laws given different remedies to patrons. These remedies

CHAP. V. Sect. 8.

Church benefices.

are, a writ of right, one of *darrein presentment*, and *quare impedit*. By the 13th of Edward I., cap. 5 (A.D. 1285), it appears that patrons, their widows, and heirs, were liable to be "disinherited of their advowsons." It gave, therefore, a writ of *quare impedit* to patrons and their heirs. Six months' notice (see also 44 George III., cap. 43) are to be given by the bishop that the church is vacant; and the appointment will lapse to him if not by that time filled up. But if he fill up before the expiration of this time, or during the time of a suit, the patron can recover damages to the amount of two years' value of the church. This act was revived by the 1st of Mary, *sessio secunda*, cap. 5, sec. 4, and still remains in force. The minister or clerk, if refused institution by the bishop, may also cite him into the spiritual court by what is called a *duplex querela*, if the bishop, within twenty-eight days after he hath been presented to him for institution, "do not inquire as to his sufficiency."—See 95th canon of 1603.

One very important change, as to patronage, has been established by the 1st and 2nd Will. IV., cap. 38, sec. 5, which gives the perpetual patronage of new churches to individuals who build and endow them; or, if *built by subscription*, those who had subscribed £50 each may appoint trustees, to whom the patronage may also be perpetually assigned.*

*Donatives* are the gifts of patrons in writing. They were at first considered private domestic chapels;

* Report of Church Building Commissioners to the House of Commons, No. 628 (1850), page 7.

but as the places or neighbourhoods increased, they became churches or chapels with cure. They are exempt from ecclesiastical jurisdiction. Once made, they become perpetual. The donee may resign, or the donor may deprive. — (*Gibson's Codex*, vol. ii., p. 865.)

It is, however, to be observed, that though the *church* is exempt from the power of the ordinary, the *patron* is not. He may, therefore, be compelled, by ecclesiastical censures, to nominate a clerk, otherwise the church might be unsupplied.

*Perpetual curacies* are churches which were served by curates from the religious houses or monasteries. When these ceased, the churches came into lay hands, who were allowed to nominate some person to the ordinary for his licence to serve the cure. By this means he became so far perpetual as not to be wholly at the pleasure of the appropriator, nor removable but by due revocation of the licence of the ordinary.

The clerks presented to donatives and curacies perpetual are obliged, in order to maintain possession, to qualify themselves, in all respects, as those who are presented, instituted, or inducted.

*Chapelries* may, by the 3rd Geo. IV., cap. 72, sec. 6, be constituted into district parish churches, and be deemed perpetual curacies, 58th Geo. III., cap. 45, sec. 25. If "exempt," *i.e.*, peculiars, the chapels are "to be subject to the bishop within whose diocese the "altar is locally situate," 2nd and 3rd Will. IV., cap. 61.

CHAP. V. Sect. 8.

Church benefices.

For the erection of *new churches* provision has been made by the 58th Geo. III., cap. 45, and 59th Geo. III., cap. 134, which granted one million and a half of money to certain commissioners for building new churches. In 1850, there had been erected four hundred and seventy churches, in which provision has been made for 498,066 persons, including 291,190 free seats to the use of the poor.

The complicated, and, in many instances, contradictory enactments contained in an immense accumulation of acts upon this one subject, render it next to impossible to present the general reader with anything like a satisfactory analysis of these laws. They may, as assuredly they ought to be, consolidated into one law, which even legal men might then have some chance to understand.

Simony.

One offence against the laws of the church has always obtained, in spite of the many attempts made to prevent its continuance. It is that of *Simony*.

This word takes its origin from Simon Magus, who thought to have purchased the gift of the Holy Ghost with money. It means a corrupt contract of gain from ecclesiastical sources.

The canon and the statute law have uniformly opposed any such transactions. Othobon, the Pope's legate, denounced the practice. " Because, when pre-

Canon, A.D. 1268.

" sentation is to be made to a vacant church, he that is " to be presented, as we hear, very often first agrees " with the patron to pay him a certain annuity out of " the goods of the church, and so is presented by com-

" pact. We, intending to obviate this simony and " waste done to the church, do wholly revoke all such " promises and compacts, and forbid such to be made " in future; and decree that if they be made, they shall " be of no force. And we revoke all pensions imposed " on parochial churches, unless they who receive them " are warranted by lawful prescription, special privi- " lege, or some other certain right."

A less ancient canon is more express. The 40th of this date reads thus, "To avoid the detestable sin " of simony, because buying and selling of spiritual and " ecclesiastical functions, offices, promotions, dignities, " and livings, is execrable before God; therefore, the " archbishop, and all and every bishop or bishops, or " any other person or persons, having authority to " admit, institute, collate, instal, or to confirm the " election of any archbishop, bishop, or other person " to any spiritual or ecclesiastical function, dignity, " promotion, title, office, jurisdiction, place or benefice " with cure or without cure, or to any ecclesiastical " living whatsoever, shall, before such admission, colla- " tion, installation, or confirmation of election, respec- " tively minister to every person hereafter to be admitted, " &c., to any archbishoprick, bishoprick, dignity, pro- " motion, &c., this oath, in manner and form following; " the same to be taken by every one whom it concerneth " in his own person and not by a proctor :—' I, N. N., do " swear that I have made no simoniacal payment, con- " tract or promise, directly or indirectly, by myself or " by any other, to my knowledge or with my consent, to A.D. 1603.

CHAP. V. Sect. 8. Church benefices.

" any person or persons whatsoever, for or concerning " the procuring and attaining of this ecclesiastical dig- " nity, place, preferment, office, or living (respectively " and particularly naming the same), nor will at any " time hereafter perform or satisfy any such kind of " payment, contract, or promise made by any other, " without my knowledge or consent; so help me God, " through Jesus Christ.' "

Statute, A.D. 1558.

The 31st Eliz., cap. 6, forbids "*any* person or persons " [parent or friend], bodies politick or corporate, making " a promise, agreement, bond,* covenant, or other " assurance, reward, gift, profit or benefit, directly or " indirectly, or any sum of money, for any benefice, " dignity, prebend, or living ecclesiastical." Nor may incumbents " exchange or resign" a living, directly or indirectly, " for any sum of money, pension, or bene- " fice."

## SECTION IX.—ECCLESIASTICAL JURISDICTION, AND CHURCH OFFICERS.

It would be a waste of time and of words to discuss the divine or scriptural right of ecclesiastics to exercise their present civil powers. Ecclesiastical jurisdiction is derived solely from the crown. The laws are express upon this point.

Thus the 25th Henry VIII., cap. 19, sec. 2, says, " No canons, constitutions, or ordinance shall be made

* Bonds to resign a living, upon warning given to the presentee so to do, have been held void.—*Gibson*, 842; see also *Burn on* " *Simony*."

" or put in execution within this realm, by authority of " the convocation of the clergy, which shall be con- " trariant, or repugnant, to the king's prerogative royal, " or the customs, laws, or statutes of this realm."

Still more express is the 37th Henry VIII., cap. 17, sec. 2, which says, " Archbishops, bishops, archdeacons, " and other ecclesiastical persons, have no manner of " jurisdiction ecclesiastical, *but by, under, and from your* " *royal majesty.*" Section 4 gives " the king, his heirs, " and successors, power to make chancellors, vicars- " general, commissaries, officials, or registers, to exercise " all manner of jurisdiction, commonly called ecclesi- " astical jurisdiction."

The 1st of Edward VI., cap. 2, was equally strong and expressive. Section 3 says, " archbishops and " bishops, and other spiritual persons, do use and send " out their processes, in such form as was used in " the time of the usurped power of the bishop of Rome, " contrary to the form of the common law of this realm, " *seeing that all authority or jurisdiction, spiritual and* " *temporal, is derived and deducted from the king's majesty.*" And again, in the same section, " ecclesiastical juris- " diction" shall be exercised " immediately from the " king's highness."

The principle is revived, or, more correctly speaking, re-announced by the 1st of Elizabeth, cap. 1, sec. 17 and 18, which assigned to the queen all such spiritual and ecclesiastical jurisdiction as hath heretofore been exercised within these realms. The 8th of Elizabeth, cap. 1, sec. 2, re-asserts that the sovereign " hath supreme

CHAP. V. Sect. 9.

Ecclesiastical jurisdiction, and church officers.

" power, jurisdiction, and authority over all the estate " ecclesiastical."

Nor are these merely theoretic principles; they are constantly carried into practical operation. *Laymen* have for a long time past, and do now exercise ecclesiastical jurisdiction. When Henry dissolved the monasteries, (which, in very many, if not in all instances, had ecclesiastical jurisdiction in courts called "peculiars," *i.e.*, exempt from the bishop's authority,) he assigned those courts to whom he liked, as by law he was enabled to do.

In the 1st and 2nd Philip and Mary, cap. 8, sec. 48, it is stated as a grievance that this "jurisdiction" was in the hands "of temporal and lay men." It was therefore restored to ecclesiastics.

But the 1st of Elizabeth, cap. 1, not only repealed this law of Mary, but revived those of Henry and Edward, above referred to; the former of which have never been altered or repealed. To this day, therefore, there are no less than seventy-six ecclesiastical courts in the hands of laymen,—eleven "royal," seventeen "other peculiars," and forty-eight manorial,"* whether they be lords or ladies of the manor; and, in some few instances, the "jurisdiction is attached to the pos- "session of the great tithes, and not to the manor." † More than this, the lord of the manor of Buildwas (diocese of Lichfield) delivered over "the spiritual and

* Ecclesiastical Commission Report of 1832, Appendix, p. 552.

† Return to the House of Commons, 25th March, 1830 (No. 205), page 419.

" temporal jurisdictions " belonging thereto, " unto the " Rev. John Bartlett, clerk." The secular thus imparted ecclesiastical jurisdiction.*

In further corroboration of the fact that the ecclesiastical is practically subordinated to the temporal jurisdiction, it is worthy of notice, that the common law courts often send prohibitions to the spiritual courts, from proceeding further in a suit. These prohibitions have been granted ever since the two orders of judicature were detached.

No doubt there are cases in which the statute has provided that no such prohibitions shall issue; such, for instance, as " deadly sins, as fornication, adultery, " leaving the churchyard unclosed, or the church un- " covered, or not sufficiently decked; the demand of " oblations, accustomed tithes, mortuaries, pensions " due to prelate or patron, laying violent hands on a " clerk, defamation, and breaking an oath;" all of which causes the courts of common law cannot, by the 13th Edw. I., cap. 1, (1285,) stop by prohibition. But if, in any even of these cases, *property*, or other *civil* rights are involved, the king's court will grant the prohibition so far as these matters are concerned.

It may serve to illustrate the value of this veto over the spiritual courts, if a passing reference be made to a state paper, presented by Archbishop Bancroft, about 1606, to the judges. This document emanated from the convocation; among a great many other complaints

* Return to the House of Commons, 16th April, 1829 (No. 177), page 45.

CHAP. V. Sect. 9.

Ecclesiastical jurisdiction, and church officers.

against the temporal courts, it states, that "the church is "pestered with prohibitions from different courts." To which the judges replied, "It is a general unbeseeming "aspersion." The church had charged "the judges with "trifling with their oaths, by not maintaining the "ecclesiastical jurisdiction as much as the temporal." To this the judges answered, "For less scandal than "this, divers have been severely punished."—*Collier.*

It is therefore evident, that so far as the episcopate is concerned, there is no essential or necessary connection between an episcopalian polity and ecclesiastical jurisdiction. Transfer this to the common law courts, to which in strict right it belongs, and episcopacy in spiritual matters would be left intact. But as the matter now stands, a perfectly different order of things has been created, and is daily maintained. Hence there are no less than three hundred and seventy-two ecclesiastical courts in England and Wales. In the greater part of the diocesan courts, clergymen act as judges, judge surrogates, chancellors, archdeacons, commissaries, and perform various legal functions. Thirty-six of these judges have had no legal education; and the proctors are, for the most part, said to be unacquainted with ecclesiastical law.*

The *judges* of the two archiepiscopal courts of Canterbury and York are appointed, and may at any time be removed, by the archbishops. The same thing obtains in all the consistory courts of the bishops. In this

* Report of Ecclesiastical Commission, App., p. 86, question 58.

respect the ecclesiastical exercises a higher prerogative than the monarchical power. Alone, the sovereign cannot remove a judge from any of the common law courts. More than this,—trial by jury has never obtained in the "courts christian." All is left with the judge, whose income is derived solely from fees.

The *advocates* are doctors of civil or Roman law; they must have taken a corresponding degree at Oxford or Cambridge University, and are admitted by permission of the archbishops of Canterbury or York. They also can be interdicted from practising in court by the diocesan, if he is not satisfied with the continued adherence of the party to the doctrines and discipline of the church of England. The same fact obtains, also, in respect of every other ecclesiastical practitioner.*

The *surrogates* in the diocesan courts are, for the most part, clergymen. In London, every advocate is a surrogate, so far as the administration of oaths is concerned. As ministers of the bishop, surrogates grant marriage licences, which are a remnant of the papal power, but which, in some districts, yield a very lucrative return. In all the courts, surrogates conduct judicial processes *pro forma*, and thus occasionally relieve the different judges.

*Chancellors* are generally clergymen; rarely, laymen. They are appointed by the bishop of the diocese, and have their courts, which take cognisance of most

* Return to the House of Commons, No. 287, 26th March, 1830, pp. 8, 12, 15, 21, and 30.

CHAP. V. Sect. 9.

Ecclesiastical jurisdiction, and church officers.

matters pertaining to ecclesiastical jurisdiction. By patent from the bishop of Norwich to the Rev. William Yonge, appointing him chancellor, it appears he was to take cognisance "of all crimes, excesses, and delin- "quencies of any persons, as well clergy as laity of "both sexes, and to correct and punish them according "to his sound learning and discretion given him "by the Lord, and to constrain them to perform "penances." *

An *archdeacon* is *oculus episcopi*. His eye traces out, on behalf of the bishop, whatever may be supposed to require his interference, both in respect of the clergy, churchwardens, and other church officers. There are thirty-seven courts belonging to archdeacons, in which they exercise a jurisdiction that is not only spiritual, but embraces civil rights; such as the grant of probates and administrations, the validity of wills and marriages, divorces, seats in churches, and other matters. They are also bound, by the 86th canon of 1603, to enforce the reparation of the fabric of churches at triennial visitations.

*Commissaries* and chancellors have the same duties; the latter being a higher post of ecclesiastical honour than the former.

*Proctors* are in the ecclesiastical, what solicitors or attorneys are in the common law courts,—*i.e.*, they conduct suits. They are admitted by permission of the archbishop or bishop, and at the time swear an obedience to the lawful commands of their diocesan.

* Return to the House of Commons, No. 691, 23rd July, 1830, p. 1.

*Churchwardens* arose, as a distinct order of church officers, somewhere about 1321. They are appointed by the ministers and parishioners; each choosing one. They are bound to attend to the reparation of the church, to provide books, and all other requirements for Divine service, and the administration of sacraments; to take charge [as trustees] of all charitable bequests to the parish, and to perform ministerially a great variety of subordinate duties. By the 115th canon of 1603, it will be seen they are obliged to present, to the ecclesiastical judge, criminal and disorderly persons, so as to "restrain shameless impiety." To them it pertains, as officers of the church, to take the initiatory step towards the correction either of the clergy or laity.

In addition to this numerous staff of ecclesiastical officers, each armed with singular powers, there is another class of persons who exercise ordinary [or bishop-like] jurisdiction. In many instances, the *bishop* of the diocese is excluded from all ecclesiastical authority in places, which, though within his territorial limits, are yet exempt from his interference. He may be supplanted by a dean, prebend, or rector of a "peculiar," of which he is ordinary or bishop. The variety of these peculiars, and the very deadly grasp with which their officers hold possession, is an almost endless source of public inconvenience and wrong. To many young clergymen they prove particularly annoying. "Can-
"didates for orders, with titles from these peculiars, have
"frequently no little difficulty as to their ordination, and

CHAP. V. Sect. 9.

Ecclesiastical jurisdiction, and church officers.

" in some instances have been altogether disappointed.
" Those who have episcopal jurisdiction are anxious to
" maintain it, and the bishops refuse to accept letters
" dismissory from these authorities." *

* Chancellor Marsh's Examination, in Ecclesiastical Commission Appendix to Report, 1843 (No. 132), page 112.

# APPENDIX.

## No. I.—ADMISSION OF ROMAN CATHOLICS TO PARLIAMENT.

(Referred to in page 117.)

*Extracts from "An Act for the Relief of His Majesty's Roman Catholic Subjects," which passed on the* 13*th day of April,* 1829, *and came into force ten days afterwards.*

WHEREAS by various acts of Parliament certain restraints and disabilities are imposed on the Roman Catholic subjects of his Majesty, to which other subjects of his Majesty are not liable: and whereas it is expedient that such restraints and disabilities shall be from henceforth discontinued: and whereas by various acts certain oaths and declarations against transubstantiation, the invocation of saints, and the sacrifice of the mass, as practised in the church of Rome, are or may be required to be taken, made, and subscribed by the subjects of his Majesty, as qualifications for sitting and voting in Parliament, and for the enjoyment of certain offices, franchises, and civil rights: Be it enacted, that from and after the commencement of this act, all such parts of the said acts as require the said declarations, or either of them, to be made or subscribed by any of his Majesty's subjects, as a qualification for sitting and voting in Parliament, or for the exercise or enjoyment of any office, franchise, or civil right, be and the same are (save as herein-after provided and excepted) hereby repealed.

II. Any person professing the Roman Catholic religion, being a peer, or who shall be returned as a member of the House of Commons, may sit and vote in either House of Parliament respectively, being in all other respects duly qualified to sit and vote therein, upon taking and subscribing the following oath, instead of the oaths of allegiance, supremacy, and abjuration:—

"I, A. B., do sincerely promise and swear, that I will be faithful and "bear true allegiance to his Majesty King George the Fourth, and will "defend him to the utmost of my power against all conspiracies and "attempts whatever, which shall be made against his person, crown, or "dignity; and I will do my utmost endeavour to disclose and make "known to his Majesty, his heirs and successors, all treasons and traitor- "ous conspiracies which may be formed against him or them: and I do "faithfully promise to maintain, support, and defend to the utmost of my "power, the succession of the crown, which succession, by an act, "intituled 'An Act for the further Limitation of the Crown, and better "securing the Rights and Liberties of the Subject,' is and stands limited "to the Princess Sophia, electress of Hanover, and the heirs of her body, "being Protestants; hereby utterly renouncing and abjuring any obe- "dience or allegiance unto any other person claiming or pretending a "right to the crown of this realm: and I do further declare, that it is not "an article of my faith, and that I do renounce and reject and abjure the "opinion, that princes excommunicated or deprived by the Pope, or any "other authority of the see of Rome, may be deposed or murdered by "their subjects, or by any person whatsoever: and I do declare, that I do "not believe that the Pope of Rome, or any other foreign prince, prelate, "person, state, or potentate, hath or ought to have any temporal or civil "jurisdiction, power, superiority or pre-eminence, directly or indirectly, "within this realm. I do swear, that I will defend to the utmost of my "power the settlement of property within this realm, as established by the "laws: and I do hereby disclaim, disavow, and solemnly abjure any "intention to subvert the present church establishment as settled by law "within this realm: and I do solemnly swear, that I never will exercise "any privilege to which I am or may become entitled, to disturb or "weaken the Protestant religion or Protestant government in the United "Kingdom: and I do solemnly, in the presence of God, profess, testify, "and declare, that I do make this declaration, and every part thereof, in "the plain and ordinary sense of the words of this oath, without any "evasion, equivocation, or mental reservation whatsoever.

"So help me God."

III. The name of the sovereign for the time being to be used in the oath.

IV. No Roman Catholic capable of sitting or voting until he has taken the oath.

V. Roman Catholics may vote at elections, and be elected, upon taking the oath.

VI. Oath shall be administered in the same manner as former oaths.

VII. Persons administering oaths at elections to take an oath duly to administer.

VIII. So much of any acts as require the formula contained in the 8th and 9th Wm. III., cap. 3 (S.), to be tendered or taken, repealed. Roman Catholics may elect and be elected members for Scotland, and be enrolled as freeholders in any shire or stewartry of Scotland, and be chosen commissioners or delegates for choosing burgesses to serve in Parliament for any districts of burghs in Scotland, being in all other respects duly qualified, such persons always taking and subscribing the oath hereinbefore appointed and set forth, instead of the oaths of allegiance and abjuration as now required by law, at such time as the said last-mentioned oaths, or either of them, are now required by law to be taken.

IX. No Roman Catholic priest to sit in the House of Commons; and proof of the celebration of any religious service by such person, according to the rites of the church of Rome, shall be deemed and taken to be *primâ facie* evidence of the fact of such person being in holy orders, within the intent and meaning of this act.

X. Roman Catholics may hold civil and military offices under his Majesty, with certain exceptions.

XI. Not to exempt Roman Catholics from taking any other oaths required.

XII. Provided that nothing herein contained shall extend, or be construed to extend, to enable any person or persons professing the Roman Catholic religion, to hold or exercise the office of guardians and justices of the United Kingdom, or of Regent of the United Kingdom, under whatever name, style, or title such office may be constituted; nor to enable any person, otherwise than as he is now by law enabled, to hold or enjoy the office of lord high chancellor, lord keeper, or lord commissioner of the great seal of Great Britain or Ireland; or the office of lord lieutenant, or lord deputy, or other chief governor, or governors of Ireland; or his Majesty's high commissioner to the general assembly of the church of Scotland.

XIII. Nothing herein to repeal 7th Geo. IV., cap. 72, as to the levy and application of church rates and parish cesses, and the election of churchwardens and the maintenance of parish clerks, in Ireland.

XIV. Roman Catholics may be members of lay corporations.

XV. Provided nevertheless, that nothing herein contained shall extend to authorise or empower any of his Majesty's subjects professing the Roman Catholic religion, and being a member of any lay body corporate, to give any vote at, or in any manner to join in the election, presentation, or appointment of any person to any ecclesiastical benefice whatsoever, or any office or place belonging to or connected with the united church of England and Ireland, or the church of Scotland, being in the gift, patronage, or disposal of such lay corporate body.

XVI. Provided also, that nothing in this act contained shall be construed to enable any persons, otherwise than as they are now by law enabled, to hold, enjoy, or exercise any office, place, or dignity of, in, or belonging to the united church of England and Ireland, or the church of Scotland, or any place or office whatever of, in, or belonging to any of the ecclesiastical courts of judicature of England and Ireland respectively, or any court of appeal from, or review of the sentences of such courts; or of, in, or belonging to the commissary court of Edinburgh; or of, in, or belonging to any cathedral or collegiate, or ecclesiastical establishment or foundation; or any office or place whatever of, in, or belonging to any of the universities of this realm; or any office or place whatever, and by whatever name the same may be called, of, in, or belonging to any of the colleges or halls of the said universities, or the colleges of Eton, Westminster, or Winchester, or any college or school within this realm; or to repeal, abrogate, or in any manner to interfere with any local statute, ordinance, or rule, which is or shall be established by competent authority, within any university, college, hall, or school, by which Roman Catholics shall be prevented from being admitted thereto, or from residing or taking degrees therein: provided also, that nothing herein contained shall extend, or be construed to extend, to enable any person, otherwise than as he is now by law enabled, to exercise any right of presentation to any ecclesiastical benefice whatsoever; or to repeal, vary, or alter in any manner, the laws now in force in respect to the right of presentation to any ecclesiastical benefice.

XVII. Provided always, that where any right of presentation to any ecclesiastical benefice shall belong to any office in the gift or appointment of his Majesty, his heirs or successors; and such office shall be held by a person professing the Roman Catholic religion, the right of presentation shall devolve upon and be exercised by the archbishop of Canterbury for the time being.

XVIII. It shall not be lawful for any person professing the Roman Catholic religion, directly or indirectly, to advise his Majesty, his heirs or successors, or the lord lieutenant, or lord deputy, or other chief governor or governors of Ireland, touching or concerning the appointment to, or disposal of any office or preferment in the united church of England and Ireland, or in the church of Scotland; and if any such person shall offend in the premises, he shall, being thereof convicted by due course of law, be deemed guilty of a high misdemeanor, and disabled for ever from holding any office, civil or military, under the crown.

XIX. Time and manner of taking oaths for corporate offices, within one month next before or upon admission.

XX. Time and manner of taking oaths for other offices under the crown, within three months.

XXI. Penalty of two hundred pounds on acting in offices without taking the oath.

XXII. Oath by military and naval officers.

XXIII. No other oaths necessary to be taken by Roman Catholics.

XXIV. And whereas the Protestant episcopal church of England and Ireland, and the doctrine, discipline, and government thereof, and likewise the Protestant Presbyterian church of Scotland, and the doctrine, discipline, and government thereof, are by the respective acts of Union of England and Scotland, and of Great Britain and Ireland, established permanently and inviolably. And whereas the right and title of archbishops to their respective provinces, of bishops to their sees, and of deans to their deaneries, as well in England as in Ireland, have been settled and established by law; be it therefore enacted, that if any person, after the commencement of this act, other than the person thereunto authorised by law, shall assume or use the name, style, or title of archbishop of any province, bishop of any bishopric, or dean of any deanery, in England or Ireland, he shall for every such offence forfeit and pay the sum of one hundred pounds.

XXV. If any person holding any judicial or civil office, or any mayor, provost, jurat, bailiff, or other corporate officer, shall resort to or be present at any place or public meeting for religious worship in England, or in Ireland, other than that of the united church of England and Ireland, or in Scotland other than that of the church of Scotland as by law established, in the robe, gown, or other peculiar habit of his office, or attend with the ensign or insignia, or any part thereof, of or belonging to such his office, such person shall, being thereof convicted by due course of law, forfeit such office, and pay for every such offence the sum of one hundred pounds.

XXVI. If any Roman Catholic ecclesiastic, or any member of any of the orders, communities, or societies hereinafter mentioned, shall, after the commencement of this act, exercise any of the rites or ceremonies of the Roman Catholic religion, or wear the habits of his order, save within the usual places of worship of the Roman Catholic religion, or in private houses, such ecclesiastic or other person shall, being thereof convicted by due course of law, forfeit for every such offence the sum of fifty pounds.

XXVII. Not to repeal statute 5th George IV., cap. 25, as relates to burials in suppressed monasteries, abbeys, or convents in Ireland, and to make further provision with respect to the burial in Ireland of persons dissenting from the established church.

XXVIII. And whereas Jesuits and members of other religious orders, communities, or societies of the church of Rome, bound by monastic or religious vows, are resident within the United Kingdom; and it is expedient to make provision for the gradual suppression and final

prohibition of the same therein ; be it therefore enacted, that every Jesuit, and every member of any other religious order, community, or society of the church of Rome, bound by monastic or religious vows, who at the time of the commencement of this act shall be within the United Kingdom, shall, within six calendar months after the commencement of this act, deliver to the clerk of the peace of the county or place where such person shall reside, or to his deputy, a notice or statement, in the form, and containing the particulars required to be set forth in the schedule to this act annexed ; which notice or statement such clerk of the peace, or his deputy, shall preserve and register amongst the records of such county or place, without any fee, and shall forthwith transmit a copy of such notice or statement to the chief secretary of the lord lieutenant, or other chief governor or governors of Ireland, if such person shall reside in Ireland, or if in Great Britain, to one of his Majesty's principal secretaries of state ; and in case any person shall offend in the premises, he shall forfeit and pay to his Majesty, for every calendar month during which he shall remain in the United Kingdom without having delivered such notice or statement as herein-before required, the sum of fifty pounds.

XXIX. Jesuits, &c., coming into the realm, to be banished.

XXX. Natural-born subjects, being Jesuits, may return into the kingdom and be registered.

XXXI. The principal secretaries of state may grant licences to Jesuits, &c., to come into the kingdom ; and may revoke the same.

XXXII. Accounts of licences to be laid before parliament.

XXXIII. In case any Jesuit, or member of any such religious order, community, or society as aforesaid, shall after the commencement of this act, within any part of the United Kingdom, admit any person to become a regular ecclesiastic, or brother, or member of any such religious order, community, or society, or be aiding or consenting thereto, or shall administer or cause to be administered, or be aiding or assisting in the administering or taking any oath, vow, or engagement, purporting or intended to bind the person taking the same to the rules, ordinances, or ceremonies of such religious order, community, or society, every person offending in the premises in England or Ireland shall be deemed guilty of a misdemeanor, and in Scotland shall be punished by fine and imprisonment.

XXXIV. In case any person shall, after the commencement of this Act, within any part of this United Kingdom, be admitted or become a Jesuit, or brother or member of any other such religious order, community, or society as aforesaid, such person shall be deemed and taken to be guilty of a misdemeanor, and being thereof lawfully convicted shall be sentenced and ordered to be banished from the United Kingdom for the term of his natural life.

XXXV. and XXXVI. The party offending may be banished by

his Majesty; and if at large after three months, may be transported for life.

XXXVII. Provided always, and be it enacted, that nothing herein contained shall extend or be construed to extend in any manner to affect any religious order, community, or establishment consisting of females bound by religious or monastic vows.

XXXVIII. Penalties to be recovered as a debt due to his Majesty, by information filed in the name of the attorney-general.

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## No. II.—OCCASIONAL CONFORMITY.

(Referred to in page 160.)

Almost immediately upon the accession of Queen Anne, an attempt was made by the House of Commons to prevent "occasional conformity." A bill was brought in and passed that House, in which it was asserted that the Toleration Act "ought inviolably to be observed;" yet, as "several persons dissenting from the church as it is by law established do "join with the members thereof in receiving the sacrament of the Lord's "supper, to qualify themselves to have and enjoy offices and employments, "and do afterwards resort to conventicles:" it therefore provided, "that "if any person holding office under her Majesty, mayors and aldermen "and common councilmen, shall, *at any time*, be present at any con- "venticle, he shall forfeit one hundred pounds for every day he shall "continue in the said office or employment, and be disabled from holding "it."

The bill was carried to the Lords on Saturday, 28th of November, 1702, who made many important amendments and additions. On the 9th of December, they sent a message to the Commons and the bill, with several amendments. This led to conferences between the two Houses, which were continued up to January, when the Lords gave in their reasons for insisting upon some of the clauses they had added. Among other reasons they say:—

> "Their lordships observe, that as the law now stands any person "having an office may be present at *mass* upon much easier terms "than he might be present at a *conventicle*.
>
> "They who think the being present at a meeting to be so high a "crime, can hardly think that a toleration of such meetings ought "to continue long, and yet the bill says the Act of Toleration ought "to be kept inviolable."

A free conference then took place on the 16th of January. The managers from the Commons *reported*:—

"That there was such a crowd in the *Painted Chamber* that "the managers could not get to the table."

*Ordered*—

"That no member do presume to stand within the bar in the "Painted Chamber, but such as are appointed managers.

"That the serjeant-at-arms summon the members there to attend "the service of the House immediately."

The serjeant reported that several members did still remain in the Painted Chamber.

*Ordered*—

"To take their names."

The House was informed that many members remained in the *passage* between the House and the Painted Chamber.

*Ordered*—

"That the serjeant go with the mace into the said passage and "summon the members."

*Reported*—

That he had done so; but that several members remained in the *lobby* and the rooms there.

*Ordered*—

"That they all do come into the House."

The Commons reported their free conference to the following effect; among other reasons —

"That they had argued that the interests of the Church and State "were not to be supported without such a bill.

"That since the invention and iniquity of men had found out "ways to evade the law, the Commons could never doubt but the "Lords would let those men see they would not be wanting on "their part to maintain and support it.

"That an established religion and a national church are abso-"lutely necessary, when so many ill men pretend to inspiration, "and when there are so many weak men to follow them.

"That they never imagined a set of men could at any time rise "up whose consciences were too tender to obey the laws, but "hardened enough to break through any.

"That to separate from a church which has nothing in it against "a man's conscience to conform to, is schism, which is a spiritual "sin."

To which the Lords replied, among other things:—

"That the Lords do not take going to a meeting to be *malum* "*in se*.

"That in the greatest extremity of the church, the Dissenters "had joined with her; when the bishops were in the Tower, the "Dissenters showed they had no prejudice to the church.

"That as hospitals and workhouses were not to be closed against "Dissenters, their lordships asked 'what hurt can there come "from Dissenting bread and cheese, or Presbiterian water-"grewel?'

"That every man knows the liturgy of the church, but none the "practice, there is such variety in it."

And the bishop of Sarum further added, "he supposed every man "believed the two first of the Thirty-nine articles; but there have been "many good and learned men who could not bring themselves up to give "their assents to some of the last."

And as the bill comprehended foreigners (especially French), who had settled in England because of their liberties, the Lords added:—

"That the improvements of our manufactures are much owing "to the foreigners that have come among us, which are so increased "that, in the late reign, we exported a million of manufactures "yearly, for several years, more than in King Charles's reign."

The Commons made several replies; stating, *inter alia*—

"That they were surprised to hear a prelate speak in defence of "occasional conformity."

The Lords insisted upon their amendments.

The Commons persisted in their disagreements, and so the bill dropped.*

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## No. III.—CONGE D'ELIRE; OR, THE RIGHT TO CHOOSE.

(Referred to in p. 196.)

Gulielmus Tertius, Dei Gratia Angliæ, &c. Dilectis nobis in Christo decano et capitulo, *ecclesiæ nostræ* cathedralis Lincoln, salutem. Ex parte vestrá nobis est, humiliter supplicatum, ut cum ecclesia prædicta, per translationem reverendissimi in Christo patris Thomæ Tenison, nuper episcopi Lincoln, ad archiepiscopatum Cantuariensem, jam vacat, et pastoris sit solatio destituta, alium vobis eligendi in *episcopum et pastorem*, licentiam nostram, fundationam vobis concedere dignaremur. Nos precibus vestris in hac parte favorabiliter inclinati, licentiam illam vobis tenore præsentium duximus concedandam: Rogantes, ac in fide et

* Reports and Conferences, printed by order of the House of Commons, 1702.

dilectione quibus nobis tenemini præcipientes, quod talem vobis eligatis in episcopum et pastorem, qui Deo devotus, nobisq ; et regno nostro utilis et fidelis existat. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste meipso apud Westm., vicessimo quinto die Januarii, anno regni nostri sexto.—A.D. 1694.

## LETTER MISSIVE—RESTRICTING THE CHOICE.

William R. Trusty and well-beloved, we greet you well. Whereas the bishopric of Lincoln is, at this present, void by the translation of the most reverend father in God, Dr. Thomas Tenison, late bishop there, to the archbishopric of Canterbury ; we let you weet, that for certain considerations, us at this present moving, we of our princely disposition and zeal, being desirous to prefer unto the same see a person meet thereunto ; and considering the virtue, learning, wisdom, and other the good gifts wherewith the Rev. James Gardiner, doctor in divinity, and sub-dean of our cathedral church of Lincoln aforesaid, is endued, we have been pleased by these our letters to name and recommend him unto you, to be elected and chosen to the said bishopric of Lincoln. Wherefore, we require you, upon receipt thereof, to proceed to your election, according to the laws of this our realm, and our congé d'elire, herewith sent unto you ; and the same election so made to certifie unto us, under your common seal. Given under our sign, at our palace at Westminster, the twenty-fifth day of January, in the sixth year of our reign.—1694.—(*Gibson*, Appendix 4 and 5.)

# INDEX.

*Alfred*—First penal statute made in his time respecting Christianity, 85.
*Anointing*—140.
*Archbishop of Canterbury*—Metropolitan of *the realm*, 183.
Power above other bishops, 200.
*Articles*—(the Thirty-nine), legal standard of the Reformed faith, 20.
The Six Articles Act of Henry VIII., 97.
*Augustine*—Primary object of his mission, 6.
Resistance of the British bishops, 7.
Their memorable reply to his proposals, 8.
Death of, 10.

*Baking Bread for the Sacraments*—to be by priests, 141.
*Baptism*—Said to be the first plank of salvation, 137.
May be administered by lay men or women, *ib.*
Punishment for neglecting, by priests or parents, *ib.*
*Benefit of clergy*—What; when abolished, 35.
Instance of an *ex post facto* law taking it away, *ib.*
*Bishops*—Originally appointed by the people, 195.
Appointment by the crown; laws respecting, *ib.*
Peers of Parliament, 181.
Exceptions, *ib.*
Power over the clergy, 130.
Election of, pronounced by law a shadow, 198.
Homage to the sovereign for temporalities, 203.
Gradation of rank among, 199.
Independence of each other, 201.
*Bishoprics*—vide *Episcopal Sees.*
*Book of Common Prayer*—Legal standard of rites and ceremonies, 20.
*Burial*—Christian burial, to whom denied, 75.
Prayers offered at, in the time of Edward VI., compared with those now used, 149.

*Burial*—Fees, 165.
Constitutional right of interment denied by *ecclesiastical* law, and remedy for, 167.

*Canon law*—Introduction of, 14.
Denounced, and yet enforced by statute, 16.
*Canonical decrees*—Opposition to them pronounced heresy, 22.
*Chancery court*—Guided in many respects by ecclesiastical laws, 13.
*Christianity*—First *legal* establishment of, by canon law, 84.
Progress of, in Britain, before Augustine's time, 3.
Not yet free, 161.
*Churches*—British, state of, prior to Augustine's arrival, 3–6.
Resistance to Augustine's mission, 7.
Submission to Rome, 9.
*Church of England*—Self-government of, 180.
Interference with various secular matters, 23.
Placed under four different kinds of law, 12–21.
The property of, derived from benefactions of individuals, 90, 212.
Division of, 224.
Its position in the state, 179.
Property of the church appropriated to secular purposes, 218.
See also under *King*.
*Clergy*—Striking the, laws respecting, 34.
Benefit of clergy—see under this head.
Celibacy of, 121.
Ancient exemption of, from civil authority, 28.
Abolition of the privilege, 34.
One of the greatest estates in the realm, 181.
*Communion*—In both kinds, legally established, 148.
Not to be denied to any one, *ib.*, and 174.
*Confirmation*—143.
*Confession*—A sacrament, 142.
Evils of, and not to be disclosed, 145.
*Congé d'elire*—Or the right to elect a bishop, 247.
*Consecration*—Of elements; churches, 140.
*Convocation*—75, and 222.
*Councils*—The first four; standard of faith, 21.

*Death*—Penalty of, by canon law, for second marriage, 78.
The belief that the time of our death is appointed by God, legally denounced, 99.
*Discipline*—Laws of, relating to the laity, 171.
Laws of, relating to priests, 175.

*Ecclesiastical jurisdiction*—Whence derived, 19, 231.
Extent of its powers, 172.
Administrators of, 172.
*Episcopal sees*—Creation of, vested in the crown, 203.
Restitution of temporalities by the sovereign to bishops, 209.
*Episcopacy*—Abolished and restored, 46.
*Excommunication*—177.

*Fasts*—Enjoined by canon law; abolished by statute law, 138–139.

*Heathenism*—Saxon; what, 83.
*Heresy*—The Catholic and Protestant standards, 21–22.

*Ignorant priests*—Canon law against, 126.
*Inspiration*—Claimed for synods, 88.
Claimed for Book of Common Prayer, 152.

*Judicial powers* of the church, confined to its own members, 173.
Not sanctioned by Scripture, 174.

*King*—The *head* of the church, when first *declared*, 186.
Extent of his powers as such, 190.
The fountain of all ecclesiastical dignity, 203.
Entitled to tenths from every spiritual promotion, 207.
Sole authority to make bishops, 196.
Patron of all possessions and benefices of the church, 184.
Free of the Pope, 185.

*Law*—The expression of national character, 1.
Said to be the perfection of reason; and proof to the contrary, 158.
Absurdity of enforcing religious truth by legal sanction, 160.
*Roman* law, when and by whom first introduced, 12.
*Canon* law, denounced by statute; parliamentary pledge that it should be abolished, 16.
*Statute* law, 19.
Mixture of secular and spiritual authority under Rome Pagan, 12; under Christianity, 15.
*Legates*—Different kinds of, 14 (*note.*)
*Liturgical forms of worship*—Various in different dioceses, 151.
*Lollards*—The first reformers,
Penal statutes against them, 90.

*Marriage*—A sacrament, solemnisation, 48.
Degrees of, 49.
Different laws of, 53.
Pre-contracts of, 54.
Second marriages exposed to death, 56, 77.
*Masses*—Abolished, 217.
*Monasteries*—Dissolved, 219.
*Monarchy and Christianity*—United, 86.
*Mortmain*—210–215.
*Mortuaries*—165.

*Nonconformists*—First law against, 107.

*Oath—Ex officio*, abolished, 80.
*Offerings*, when made compulsory, 162.
At one time amounted to a penny, 163.
*Ordination*—Episcopal, 123.
Moravian, 124.
Church of Rome admitted valid, 124.

*Pardons and indulgences*—Granted by the church, 37.
Abolished by statute, 39.
*Physicians*—Once licensed by bishops, 41.
See also *Trades*.
*Pope*—of Rome; first submission of the British churches to his authority, 9.
Denounced by statutes, 55, 184, 185, 205, 220.
*Premunire*—The acts of, 197.
*Priests*—The highest spiritual distinction, 119.
Ordination—by bishop and ministers, 123.
Subscription to thirty-nine articles, 125.
Rules as to dress—obedience, 120.
Orders, not to be relinquished, 131.
How deprived, 134.
Concurrence of the people in their ordination, 128.
*Probates*—See *Wills*.

*Quakers*—Affirmation admitted, 113.
*Queen Anne's Bounty*—194.

*Rates for repairing the church*—168.
*Regalia*—Ancient exercise of royal prerogatives by the church, 37.

*Religious opinions*—102–117.
*Roman Catholics*—Penal Statutes against, 105—115.

*Sacrilege*—Punishment for stealing from a church or a priest, abolition of the privilege, 23, 25.
*Sanctuaries*—Abuses of, and abolition, 26.
*Scriptures*—Forbidden to be translated or read, 93.
*Sin* punished by law, 172.
*Slavery*—(*English*)—Denounced by canon, 73.
Inflicted upon criminous priests, 34.
*Supremacy*—See *King*.

*Tenths* of all ecclesiastical promotions paid to the crown, 207.
*Test Acts*—Corporation, clergy, and parliamentary, 110, 111, 112.
*Tithes*, 65, 71.
Made *civil* rights, 68.
Payment of, by Quakers, 69.
*Toleration Act*—116, 160.
*Trades*—Canons respecting, 41.
*Transubstantiation*—Defined by law, 97.
Death—*not* to believe it, 97.
Penalty *for* believing it, and repeal of, 112.

*Unity*—Various laws enforcing, 87—102.
*Uniformity Acts*—History and failure of, 150—160.
*Unitarians*—Denied, and afterwards admitted to toleration, 113.
*Usury*—A canonical offence, 71.

*Wickliffe, John*—Denounced, 93.
*Wills*—Interference of the church, in making and in proving wills, 57.
Evils of this usurpation, 64.

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